

A CALL TO ARMS: A REVIEW OF BENEFITS FOR DEPLOYED FEDERAL EMPLOYEES

HEARING

BEFORE THE
SUBCOMMITTEE ON FEDERAL WORKFORCE,
POSTAL SERVICE, AND THE DISTRICT
OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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A CALL TO ARMS: A REVIEW OF BENEFITS FOR DEPLOYED FEDERAL EMPLOYEES

WEDNESDAY, SEPTEMBER 16, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL
SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room 2154, Rayburn House Office Building, Hon. Gerald E. Connolly presiding.

Present: Representatives Norton, Cummings, Connolly, and Bilbray.

Staff present: William Miles, staff director; Aisha Elkheshin, clerk/legislative assistant; Jill Crissman, professional staff member; Daniel Zeidman, deputy clerk/legislative assistant; Dan Blankenburg, minority director of outreach and senior advisor; Adam Fromm, minority chief clerk and Member liaison; Alex Cooper, minority professional staff member; and Lt. Glenn Sanders, minority Defense fellow.

Mr. CONNOLLY. The hearing will now come to order. And I welcome Ranking Member Bilbray of California and members of the subcommittee, hearing witnesses, and all those here in attendance.

The purpose of the hearing is to examine existing policies and the range of employee benefits available to Federal civilian employees serving in designated combat areas. The Chair, ranking member and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days in which to submit statements and additional questions for the record.

I would like to welcome everybody here to this afternoon's subcommittee hearing intended to explore critical yet frequently forgotten issues relating to the pay, protection, and other personnel policies of Federal civilian employees serving in high-risk environments abroad.

Although our chairman, Congressman Stephen Lynch, could not chair this hearing, his interest in this policy area is the motivation for this hearing. Chairman Lynch has requested that his full statement for the hearing be submitted for the record. Without objection, it is so ordered.

[The prepared statement of Hon. Stephen F. Lynch follows:]

STATEMENT OF CHAIRMAN STEPHEN F. LYNCH

**SUBCOMMITTEE ON FEDERAL WORKFORCE
AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA HEARING ON**

“A Call to Arms: A Review of Benefits for Deployed Federal Employees”

Wednesday, September 16, 2009

Today’s hearing is being held to examine existing and potential employee benefits for federal workers who serve in combat zones. Deployed federal employees who volunteer for such high-risk and danger-filled jobs, and who make enormous sacrifices for our nation, deserve the Committee’s scrutiny and attention.

Since 2001, approximately 35,000 federal employees have been deployed to Iraq and Afghanistan in support of ongoing combat missions, political and economic development efforts, and state reconstruction projects related to Operation Enduring Freedom and Operation Iraqi Freedom. Current and formerly deployed federal employees report inconsistencies in pay, leave, and worker compensation benefits, as well as medical care upon return.

Civilian benefit programs, including the Federal Employees Health Benefits Program (FEHBP), the Federal Employees’ Group Life Insurance Program (FGLI), and the Office of Workers’ Compensation Programs (OWCP), were not designed with the unique nature of combat conditions in mind, necessitating a review of current bureaucratic hurdles and holes in coverage encountered by returning deployed civilians. Additionally, deployed federal employees are not presently afforded access to the Veterans’ Affairs (VA) system and its nationwide system of hospitals and physicians that are well-equipped to handle psychological combat trauma and certain types of war-related injuries.

As the federal government continues the ‘diplomatic surge’ and expands the use of our civilian workforce in high-threat areas such as Iraq and Afghanistan, we must ensure that we are able to address the unique needs of our deployed federal workers and their families, and care for those federal employees appropriately when they are injured in the service of our country. Agencies that are tasked with recruiting such volunteers also need to ensure that the benefit programs and incentive packages they offer are attractive.

The Committee believes a comprehensive assessment regarding the adequacy and uniformity of current federal benefits and policies in this area is warranted.

Mr. CONNOLLY. As an advocate for the Federal community myself—I represent 56,000 Federal workers and maybe as many retirees—I’m especially pleased to serve as Chair of today’s hearing, “A Call to Arms: A Review of Benefits for Deployed Federal Employees.”

Today’s hearing affords us the opportunity to examine a host of benefit challenges and discrepancies currently confronting deployed Federal employees. Federal workers who serve our Nation in the combat areas of Iraq and Afghanistan and other war zones deserve assurance that the Federal Government has a uniformed strategy in place to handle both pre- and post-deployment issues no matter the employing agency.

With tens of thousands of Federal employees having served overseas in combat theater in this decade, it greatly disturbed me to learn this from comments a former deployed Federal employee, made who was gravely injured by enemy fire last year in Iraq, that: The military saves your life, gets you home, and then it’s totally up to you.

In addition to ensuring seamless medical care upon return and efficient and straightforward processing of Workers’ Compensation claims, I believe Federal agencies need to do more in support of these individuals stateside, following their deployment, in the areas of medical screening, mental health support services, and then dealing with their home and other agencies when filing for benefits and seeking treatment.

Unlike their military counterparts, deployed Federal employees do not operate within an established framework, and often have to navigate bureaucratic hurdles to get their health care coverage, unaided. Given the expanding role of Federal civilian employees in support of ongoing military operations and statecraft endeavors, agencies are in a position of needing to recruit Federal workers who are willing to serve in hostile environments. As a result, addressing pay inconsistencies, leave flexibilities, and holes in post-deployment medical care and Workers’ Compensation are key to guaranteeing such an abundant and dedicated work force.

I would like to thank the witnesses for appearing here today as we take a hard look into what’s being done and what options may need to be considered to guarantee that deployed Federal employees, brave men and women who serve their country, and their family members are receiving the proper support and treatment they deserve from a grateful Nation.

[The prepared statement of Hon. Gerald E. Connolly follows:]

STATEMENT OF CONGRESSMAN GERALD E. CONNOLLY

**SUBCOMMITTEE ON FEDERAL WORKFORCE
AND POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA HEARING ON**

“A Call to Arms: A Review of Benefits for Deployed Federal Employees”

Wednesday, September 16, 2009

Again, I'd like to welcome everyone to this afternoon's Subcommittee hearing, which is intended to explore critical but yet often forgotten issues relating to the pay, protection, and existing policies for federal civilian employees serving in high risk environments abroad. I'd like to make note of the absence of our Chairman, Congressman Stephen Lynch, whose interest in this policy area serves as the motivation for this afternoon's Hearing. Chairman Lynch has requested that his statement for the hearing be submitted for the record and hearing no objection, so ordered.

As a champion of the federal community and the Representative of thousands of federal workers, I am especially pleased to serve as Chair for today's hearing, entitled, **“A Call to Arms: A Review of Benefits for Deployed Federal Employees.”** Today's proceeding affords us the opportunity to examine a host of benefit challenges and discrepancies currently confronting deployed federal employees. Federal workers who serve our nation in combat areas in support of Operation Iraqi Freedom and in Afghanistan as part of Operation Enduring Freedom deserve assurance that the federal government has a uniform strategy in place to handle both pre- and post deployment issues---no matter the employing agency.

With tens of thousands of federal employees having served overseas in combat theatre in this decade, it greatly disturbs me to hear comments from a former deployed federal employee, who was gravely injured by enemy fire last year in Iraq, that “the military saves your life, gets you home, and then it's totally up to you.” In addition to ensuring seamless medical care upon return, and efficient and straightforward processing of workmen's compensation claims, it is clear that agencies need to do more in terms of supporting these individuals stateside following their deployment in the areas of post-deployment medical screenings, mental health support services, and in simply dealing with their home and other agencies when filing for benefits and seeking treatment. Unlike their military counterparts, deployed federal employees do not operate within an established framework, and report being forced to navigate bureaucratic hurdles unaided.

Given the expanding role of federal civilian employees in support of ongoing military operations and statecraft endeavors, agencies are in a position of needing to recruit federal workers who are willing to serve in hostile environments. As a result, addressing pay inconsistencies and leave flexibilities, as well as existing holes in post-

deployment medical care and workmen's compensation policies, are key to guaranteeing an abundant and dedicated workforce.

I'd like to thank the witnesses for appearing here today as we take a hard look into what is being done—and what options may need to be considered- to guarantee that deployed federal employees, and their family members, are receiving the proper support and treatment they deserve from a grateful nation.

Mr. CONNOLLY. I now call upon the ranking member, Mr. Bilbray, for any opening statement he may have.

Mr. BILBRAY. Thank you, Mr. Chairman.

Mr. Chairman, let me ask for unanimous consent to introduce a written statement.

Mr. CONNOLLY. Without objection.

Mr. BILBRAY. And basically you said it very appropriately. I think that we've just got to understand that the rule of law has always been a cultural given, at least we assumed to have been, since Mesopotamia started using a concept on clay tablets. So I think that we need to have some kind of understanding of what is the restraints, where are the limits, and where are the opportunities. And people should know that up front. We shouldn't be making the rules as we go on. And I think the concept of written law and regulation is just not only a cultural given in our society, it's common decency. And so I will look forward to this hearing.

I think that the new Obama administration's commitment to creating a civilian surge in Afghanistan really is an example of where we need to get our act together on this, we need to set out these lines. The new administration obviously expects this to be a critical part of our national presence around the world, so we need to make sure that presence is under the rule of law.

I yield back, Mr. Chairman.

Mr. CONNOLLY. I thank the gentleman from California.

I now call upon the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. I want to thank the chairman for calling this hearing today. And certainly I thank our witnesses who have come today to examine policy disparities that exist across Federal agencies that deploy civilian employees to serve our country in deployed environments.

Since 2001, more than 41,000 civilians have served or are currently serving in Iraq or Afghanistan. One of the realities of fighting concurrent wars in both Iraq and Afghanistan is that our military cannot conduct its missions alone. The military has to use every available soldier on the front lines. Additionally, the nature of how we fight our current enemy has caused us to rely more heavily on civilians not only to provide assistance in service-support roles, but also to be actively engaged in the day-to-day stability and reconstruction efforts alongside our troops.

Rightfully, we go out of our way to ensure that our deployed military troops receive the proper medical and compensation benefits while they fight for our Nation. Well, our deployed civilian population should be no different, as they face dangerous situations also.

Studies have found disparities with approving Workers' Compensation and post-deployment medical screening affecting benefits. Regardless of whether a deployed civilian originates from the Department of Defense, State Department, or the U.S. Agency for International Development, these volunteers are placed in harm's way and deserve equitable treatment when it comes to medical care benefits and compensation.

DOD and State already have the infrastructure to provide medical care while civilians are deployed in the theater of operations; but unlike the military, when our civilians return home, their med-

ical wellness is forgotten. We mandate that the military complete post-deployment health assessments to identify symptoms related to posttraumatic stress disorder; yet, DOD and State are the only agencies that require medical screening of civilians upon return from deployments. Therefore, we need to do a better job of communicating the policies that govern medical care, benefits, and compensation for our deployed civilians.

As we have learned from casualty reports, there are numerous risks that a civilian accepts when he or she decides to work in a combat zone. It is no secret that money and benefits are lucrative enticements for agencies to attract individuals willing to deploy. As such, individuals should receive comparable compensation commensurate with their skill levels and the amount of risk involved in their daily functions.

Finally, understanding that Federal agencies operate under different pay systems, compensation packages will differ to a degree, but the Office of Personnel Management should provide overarching compensation and benefit policy for deployed civilians and the authorities given to the agencies for implementation. Given the course of our military, I do not foresee a change in the near future on our reliance of civilians on the battlefields. As we continue a "whole of government" approach to stabilizing and reconstructing other regions around the world, we must be creative in utilizing existing systems to meet our current challenges. I think that it would be worthwhile to expand DOD and State procedures to incorporate the civilian aspect.

And, Mr. Chairman, with that I thank you again for calling this hearing, and I yield back.

Mr. CONNOLLY. I thank the gentleman.

At this time, I would ask the witnesses to stand. It is committee policy that all witnesses before this committee are sworn in.

[Witnesses sworn.]

Mr. CONNOLLY. Let the record show that each witness answered in the affirmative. I thank you.

If I may give a brief introduction to our panelists.

Brenda Farrell was appointed Service Director in GAO's Defense Capabilities and Management Team in April 2007. She is responsible for military and civilian personnel issues, including those related to GAO's high-risk area personnel security clearances. Ms. Farrell began her career at GAO in 1981 and has served in a number of issue areas associated with national security issues.

Marilee Fitzgerald was appointed as the Director of Workforce Issues and International Programs in the Office of Deputy Under Secretary of Defense for Civilian Personnel Policy in June 2005. Ms. Fitzgerald is responsible for the oversight and approval of the Department of Defense human resource policies and programs that affect over 700,000 employees worldwide. She also serves as the Principal Deputy to the Deputy Under Secretary of Defense for Civilian Personnel Policy.

Steven Browning is Ambassador Steven Browning, a career member of the Senior Foreign Service, holding the rank of Career Minister. Ambassador Browning assumed his duties as Principal Deputy Assistant Secretary of State in the Bureau of Human Resources in August 2009. Most recently, Ambassador Browning

served as Ambassador to the Republic of Uganda. Prior to that, he served as the Minister Counselor for Management in the U.S. Embassy in Baghdad.

Robin Heard. Robin Heard is the current Deputy Assistant Secretary for Administration at the U.S. Department of Agriculture. Ms. Heard also served as Acting Budget Analyst at OMB. She is not with us today, but I believe that there is somebody here from the Department of Agriculture who can answer some questions. Is that correct?

VOICE. I am here.

Mr. CONNOLLY. OK. Jerome Mikowicz is the Deputy Associate Director for Pay and Leave Administration with the Strategic Human Resources Policy Division of the U.S. Office of Personnel Management. He is a career member of Senior Executive Service and manages the Center for Pay and Leave Administration responsible for administering dozens of governmentwide statutory authorities related to pay, leave, work, and—work schedules for civilian Federal employees.

And finally, but not least, Shelby Hallmark. Shelby Hallmark is the Acting Assistant Secretary for Employment Standards Administration of the U.S. Department of Labor and Director of the Office of Workers' Compensation Programs, and is also the permanent OWCP Director.

Welcome, all of you.

Before we begin hearing from members of the panel, Ms. Norton, the Delegate from Washington, DC, has joined us. And I now call on the gentlelady for her opening remarks. Welcome.

Ms. NORTON. Thank you very much, Mr. Chairman. I wanted to be here for as long as I could.

This subcommittee has done an excellent job of taking care of Federal employees at home, but our own work indicates that we've not been nearly—the Congress, at least, has not been nearly as vigilant when we deploy—and that's the right word for it—civilian workers abroad.

Whenever I visit abroad, in fact the first people we come in contact with are Federal employees, just like the ones who are our own constituents here, except there they are far away from home. And more and more of them have been deployed to combat zones and serve under what can only be called, Mr. Chairman, hardship posts. Try going to parts of Africa and Iraq, other parts of the Mideast which are under fire, and you are categorized as civilian, something happens to you there, and you don't have the same access that those who courageously serve us in the Armed Forces have always had, and so unintentionally there is a distinction among our Federal employees. We are responsible for them not just in this country, but most especially when they are abroad.

And, Mr. Chairman, I recall speaking with employees who had been deployed for some time in various parts of the Mideast, and were astounded to learn—one of the complaints indeed was that there has to be turnover. There's too much turnover; that our employees come for a while, and then they go. Well, the reasons are very clear. This is hardship with capital letters. They are away from home, from family. And then they have uncertain benefits, particularly when they incur unexpected events in their own lives.

We have to make it attractive to go abroad. We have to make it less of a hardship to go abroad. This is not Paris, my friends. These are not posts in the great cities that are legendary in history where in your off hours you can go sightseeing. I have seen Federal employees in places where there was nothing in the evening. I hope they like books. And I think because our employees tend to be fairly bookish and intelligent and intellectual, they use the time, of course, to good effect. We need to pay the kind of attention you, Mr. Chairman, and this subcommittee is paying now.

And I will stay for as long as I can, but I wanted to be here to thank you and the subcommittee, and particularly to thank the witnesses who come to educate us about these out-of-sight, out-of-mind employees of the United States of America serving their country. Thank you again.

Mr. CONNOLLY. I thank the gentlewoman from the District of Columbia, and thank her for her commitment to all of the employees of the Federal Government.

Witnesses have been sworn in. I want to just say to everybody that your entire statement has been entered into the record. Everybody has 5 minutes in which to summarize their testimony. The green light will go on to indicate that your 5 minutes has begun; the yellow light means you have 1 minute remaining to complete your statement; and the red light indicates that the hook is coming.

So if we can begin with you, Ms. Farrell.

STATEMENTS OF BRENDA S. FARRELL, DIRECTOR, DEFENSE CAPABILITIES AND MANAGEMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; MARILEE FITZGERALD, DIRECTOR, WORKFORCE ISSUES AND INTERNATIONAL PROGRAMS, OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY, U.S. DEPARTMENT OF DEFENSE; STEVEN A. BROWNING, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF HUMAN RESOURCES, U.S. DEPARTMENT OF STATE; JEROME D. MIKOWICZ, DEPUTY ASSOCIATE DIRECTOR, PAY AND LEAVE ADMINISTRATION, STRATEGIC HUMAN RESOURCES POLICY DIVISION, U.S. OFFICE OF PERSONNEL MANAGEMENT; AND SHELBY HALLMARK, ACTING ASSISTANT SECRETARY, EMPLOYMENT STANDARDS, U.S. DEPARTMENT OF LABOR

STATEMENT OF BRENDA S. FARRELL

Ms. FARRELL. I can project, but I think this will be better.

Mr. Connolly, members of the subcommittee, thank you for the opportunity to discuss our recent report on actions needed to better track and provide timely and accurate compensation and medical benefits to deployed Federal civilians.

As DOD has expanded its involvement in overseas military operations, it has grown increasingly reliant on its Federal civilian work force to provide support in times of war or national emergency. Other Federal agencies also play an important role in the stabilization and reconstruction of at-risk countries and regions consistent with the collaborative "whole of government" approach. Therefore, the need for attention to policies and benefits that affect

the health and welfare of these individuals becomes increasingly significant.

My main message today is that, given the importance of the missions these civilians support and the potential dangers in the environments in which they work, Federal agencies need to take additional actions to ensure that the compensation packages associated with such service are appropriate and comparable, and that these civilians receive all the compensation and benefits to which they are entitled.

My written statement is divided into three parts. The first addresses compensation policies for deployed civilians. Although policies concerning compensation are generally comparable across the six selected agencies that we reviewed, we found some issues that affect the amount of compensation that they receive depending upon such things as the pay system and the accuracy, timeliness, and completeness of the compensation.

For example, two comparable civilian supervisors who deploy under different pay systems may receive different rates of overtime pay, because this rate is set by the employee's pay system and grade or band.

In April 2008, a congressional committee asked OPM to develop a comprehensive benefits package for all deployed civilians and recommend enabling legislation, if appropriate. At the time of our review, OPM had not done so.

Also, implementation of some policies may not always be accurate or timely. For example, we estimate that about 40 percent of the deployed civilians we surveyed reported experiencing problems with compensation, including not receiving danger pay, or receiving it late, in part because they were unaware of their eligibility or did not know where to seek assistance.

The second part of my written statement addresses the medical benefits. We found some issues with policies related to medical care following deployment and with Workers' Compensation and post-deployment medical screenings that affect the benefits of deployed civilians.

For example, while DOD allows its treatment facilities to care for non-DOD civilians following deployment, in some cases the circumstances are not always clearly defined, and some agencies were unaware of DOD's policy. Because DOD's policy is unclear, confusion exists within DOD and other agencies regarding civilians' eligibility for care at military treatment facilities. Thus, some civilians cannot benefit from the efforts DOD has undertaken in areas such as posttraumatic stress disorder.

Also, civilians who deploy may be eligible for benefits through Workers' Compensation. Our analysis of 188 such claims revealed some significant delays resulting in part from a lack of clarity about the documentation required. Without clear information on what documents to submit, applicants may continue to experience delays.

Further, while DOD requires medical screenings of civilians before and after deployment, State requires screenings only before deployment. Prior GAO work has found documenting the medical condition of deployed personnel before and after deployment was criti-

cal to identifying medical conditions that may have resulted from deployments.

The third part of my written statement addresses the identification and tracking of deployed civilians. Each of the selected six agencies included in our review provided us with a list of deployed civilians, but none had fully implemented policies to identify and track these civilians. DOD, for example, had procedures to identify and track civilians, but concluded that its guidance was not consistently implemented. While other agencies had some ability to identify and track civilians, some had to manually search their systems. Thus, agencies may lack critical information on the location and movement of personnel, which may hamper their ability to intervene promptly to address emerging medical issues.

Mr. Connolly, that concludes my remarks. I would be pleased to take questions when the committee so desires.

Mr. CONNOLLY. Thank you so much.

[The prepared statement of Ms. Farrell follows:]

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on the Federal
Workforce, Postal Service, and the District of
Columbia, Committee on Oversight and
Government Reform, House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
Wednesday, September 16, 2009

HUMAN CAPITAL

Improved Tracking and Additional Actions Needed to Ensure the Timely and Accurate Delivery of Compensation and Medical Benefits to Deployed Civilians

Statement of Brenda S. Farrell, Director
Defense Capabilities and Management



September 2009

HUMAN CAPITAL

Improved Tracking and Additional Actions Needed to Ensure the Timely and Accurate Delivery of Compensation and Medical Benefits to Deployed Civilians



Highlights

Highlights of GAO-09-1019T, a testimony before the Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, Committee on Oversight and Government Reform, House of Representatives.

Why GAO Did This Study

The Department of Defense (DOD) and other executive agencies increasingly deploy civilians in support of contingency operations in Iraq and Afghanistan. Prior GAO reports show that the use of deployed civilians has raised questions about the potential for differences in policies on compensation and medical benefits. When these civilians are deployed and serve side by side, differences in compensation or medical benefits may become more apparent and could adversely impact morale.

This statement is based on GAO's June 2009 congressionally requested report, which compared agency policies and identified any issues in policy or implementation regarding (1) compensation, (2) medical benefits, and (3) identification and tracking of deployed civilians. GAO reviewed laws, agency policies and guidance, interviewed responsible officials at the Office of Personnel Management (OPM) and the six selected agencies, including DOD and State; reviewed workers' compensation claims filed by deployed civilians with the Department of Labor from January 1, 2006 through April 30, 2008; and conducted a survey of deployed civilians. GAO made ten recommendations for agencies to take actions such as reviewing compensation laws and policies, establishing medical screening requirements, and creating mechanisms to assist and track deployed civilians. At the time of this testimony, the agencies were in various stages of taking action.

View GAO-09-1019T or key components. For more information, contact Brenda S. Farrell at (202) 512-3604 or farrelb@gao.gov.

What GAO Found

While policies concerning compensation for deployed civilians are generally comparable, GAO found some issues that affect the amount of compensation—depending on such things as the pay system—and the accuracy, timeliness, and completeness of this compensation. For example, two comparable civilian supervisors who deploy under different pay systems may receive different rates of overtime pay because this rate is set by the employee's pay system and grade/band. While a congressional subcommittee asked OPM to develop a benefits package for all civilians deployed to war zones and recommend enabling legislation, at the time of GAO's review, OPM had not yet done so. Also, implementation of some policies may not always be accurate or timely. For example, GAO estimates that about 40 percent of the deployed civilians in its survey reported experiencing problems with compensation, including danger pay. GAO recommended, among other things, that OPM oversee an agency working group on compensation to address differences and, if necessary, make legislative recommendations. OPM generally concurred with this recommendation.

Although agency policies on medical benefits are similar, GAO found some issues with medical care following deployment, workers' compensation, and post deployment medical screenings that affect the benefits of deployed civilians. Specifically, while DOD allows its treatment facilities to care for non-DOD civilians following deployment in some cases, the circumstances are not clearly defined and some agencies were unaware of DOD's policy. Civilians who deploy also may be eligible for benefits through workers' compensation. GAO's analysis of 188 such claims revealed some significant delays resulting in part from a lack of clarity about the documentation required. Without clear information on what documents to submit, applicants may continue to experience delays. Further, while DOD requires medical screening of civilians before and following deployment, State requires screenings only before deployment. Prior GAO work found that documenting the medical condition of deployed personnel before and following deployment was critical to identifying conditions that may have resulted from deployment. In June 2009, GAO recommended, among other things, that State establish post-deployment screening requirements and that DOD establish procedures to ensure its post-deployment screenings requirements are completed.

Each agency provided GAO with a list of deployed civilians, but none had fully implemented policies to identify and track these civilians. DOD, for example, had procedures to identify and track civilians but concluded that its guidance was not consistently implemented. While the other agencies had some ability to identify and track civilians, some had to manually search their systems. Thus, agencies may lack critical information on the location and movement of personnel, which may hamper their ability to intervene promptly to address emerging health issues. GAO recommended that DOD enforce its tracking requirements and the other five agencies establish tracking procedures. DOD and four agencies concurred with the recommendations; one agency did not.

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss our recent report on the actions needed to better track and provide timely and accurate compensation and medical benefits to deployed federal civilians.¹ As the Department of Defense (DOD) has expanded its involvement in overseas military operations, it has grown increasingly reliant on its federal civilian workforce to provide support. The civilian workforce performs, among other things, combat support functions that traditionally have been performed by the uniformed military, such as logistics support and maintenance. DOD acknowledged its growing reliance on civilian personnel in its 2006 Quadrennial Defense Review, and since fiscal year 2004 the department has converted thousands of military positions to civilian positions and is planning to convert more. In addition, in April 2009, the Secretary of Defense announced plans to convert 33,600 contractor positions to federal civilian positions. The Department of State (State) and other federal agencies also play an important role in the stabilization and reconstruction of at-risk countries and regions, consistent with a collaborative, "whole of government"² approach.

According to DOD and State estimates, the federal government has deployed, since 2001, over 10,000 civilians in support of the stabilization and reconstruction efforts in Iraq and Afghanistan.³ These deployed civilians work in close proximity to one another and represent a cross section of employees from a number of different agencies, including the six covered in our review: DOD, the Departments of State, Homeland Security, Agriculture, and Justice, and the U.S. Agency for International

¹ GAO, *Human Capital: Actions Needed to Better Track and Provide Timely and Accurate Compensation and Medical Benefits to Federal Civilians*, GAO-09-562 (Washington D.C.: June 26, 2009).

² According to the Project on National Security Reform, Case Studies Volume I, (Washington, D.C.), "whole of government" refers to an approach that fosters governmentwide collaboration on purpose, actions, and results in coherent combined application of available resources to achieve the desired objective or end state. This approach addresses the military and civilian coordination discussed in National Security Presidential Directive NSPD-44, *Management of Interagency Efforts Concerning Reconstruction and Stabilization* (Dec. 7, 2005).

³ GAO-09-562.

Development (USAID).⁴ While in theater, deployed civilians—regardless of which executive agency employs them—fall under the purview of either DOD or State, but remain subject to the administrative processes of their employing agencies for compensation.⁵ This civilian workforce consists of employees who are compensated under several different pay systems in use at the time of our review, including the General Schedule (GS), Foreign Service (FS), and the recently implemented National Security Personnel System (NSPS)⁶ for DOD civilian employees. Each of these pay systems is governed by unique authorizing statutes, most of which existed prior to the current operations in Iraq and Afghanistan. The statutes, as implemented in accordance with Office of Personnel Management (OPM)⁷ and agency regulations and policies, outline the monetary and nonmonetary compensation to which employees under each system are entitled, certain elements of which are set without regard to the location in which they are working. Monetary compensation includes payments such as salary and danger pay and nonmonetary compensation includes benefits such as leave and retirement contributions.⁸ In addition, these deployed civilians are entitled to certain medical benefits.

As we previously reported, DOD's use of civilian personnel to support military operations has long raised questions about its policies on

⁴ We selected the Department of Defense because it deploys the greatest number of civilians to Iraq and Afghanistan. We also included the Departments of State, Homeland Security, Agriculture, and Justice, and the U.S. Agency for International Development because these agencies deployed most of the civilians assigned to the embassies and provincial reconstruction teams in Iraq and Afghanistan.

⁵ Under 22 U.S.C. § 3927, the Chief of Mission "shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander)".

⁶ DOD began converting civilian employees into NSPS in 2005. As we recently testified, as of February 2009, over 206,000 DOD civilians had been converted into NSPS. GAO, *Human Capital: Improved Implementation of Safeguards and an Action Plan to Address Employee Concerns Could Increase Employee Acceptance of the National Security Personnel System*, GAO-09-464T (Washington, D.C.: Apr. 1, 2009).

⁷ Specifically, OPM issues regulations and provides policy guidance to executive branch agencies on matters involving personnel management.

⁸ In this report, we use the term "monetary compensation" to refer to payments made to the employee for work performed such as salary, danger pay, post hardship differential, and overtime. "Nonmonetary compensation" refers to benefits such as leave, retirement contributions, and insurance premiums paid on behalf of the employee.

compensation and medical benefits for such civilians.⁹ For example, in 2006 DOD did not have quality assurance procedures in place to ensure that deployed civilians completed (1) pre-deployment health assessments to make certain they were medically fit to deploy and (2) post-deployment health assessments to document their health status following deployment, environmental exposures, and health concerns related to their work while deployed. Consequently, DOD had no assurance that civilians were medically fit to deploy and could not identify any follow-up medical treatment these civilians required following deployment. In addition, we reported that procedures were not in place during the Gulf War to provide for overtime or danger pay that deployed civilians were entitled to receive.¹⁰ Now that other executive agencies in addition to DOD and State are deploying civilians to Iraq and Afghanistan,¹¹ Congress has noted that although these civilians are working under similar conditions and being exposed to the same risks, they may be receiving different levels of compensation and medical benefits. The unique working conditions employees may encounter in Iraq and Afghanistan can create an environment that increases the visibility of issues associated with pay systems and compensation that employees working under normal circumstances would not encounter. When these civilians are deployed and serve side by side, the differences in pay systems may become more apparent and may adversely impact morale. As a result, Congress has enacted a number of laws aimed at leveling compensation for deployed civilians across agencies and pay systems. For example, beginning in 2006, Congress granted agency heads the discretion to provide their deployed civilians certain compensation and benefits comparable to those of the Foreign Service, such as death gratuities and leave benefits. Congress has

⁹ GAO, *DOD Civilian Personnel: Medical Policies for Deployed DOD Federal Civilians and Associated Compensation for Those Deployed*, GAO-07-1235T (Washington, D.C.: Sept. 18, 2007); and *DOD Civilian Personnel: Greater Oversight and Quality Assurance Needed to Ensure Force Health Protection and Surveillance for Those Deployed*, GAO-06-1085 (Washington, D.C.: Sept. 29, 2006).

¹⁰ GAO-07-1235T; GAO-06-1085.

¹¹ In addition to DOD, State, and the other agencies involved in this review, we have identified several other executive agencies that have deployed civilians to Iraq or Afghanistan. These include the Departments of Commerce, Health and Human Services, Treasury, Transportation, and Energy.

also enacted laws that allow agency heads to waive premium pay caps for deployed civilians.¹²

In addition, in April 2008, the Subcommittee on Oversight and Investigations, House Armed Services Committee issued a report on incentives, benefits, and medical care for deployed civilians.¹³ In this report, the Subcommittee recommended, among other things, that OPM develop an incentive and benefits package that would apply to all federal civilians deployed to a war zone and submit legislative recommendations, if necessary, to Congress. In June 2008, OPM issued a memorandum urging the executive agencies that deploy civilians to make every effort to eliminate any disparities or inconsistencies in these deployed civilians' compensation by applying any available and appropriate compensation authorities.¹⁴

My statement today focuses on our review of executive agencies' policies and practices regarding the compensation and medical benefits they provide to civilian employees who deploy to Iraq or Afghanistan.¹⁵ Specifically, we examined the extent to which the six agencies we reviewed have (1) comparable policies concerning compensation and any issues that may affect the compensation to which deployed civilians are entitled; (2) comparable policies and practices concerning medical benefits for deployed civilians and any issues that may affect the medical benefits to which deployed civilians are entitled; and (3) policies and procedures to identify and track deployed civilians to address any future

¹² The premium pay cap places a ceiling on the amount of basic pay (salary plus locality pay) plus premium pay (overtime pay, Sunday pay, holiday pay, and night differential) that an employee can earn during a calendar year.

¹³ U.S. House of Representatives, Committee on Armed Services, Subcommittee on Oversight and Investigations, *Deploying Federal Civilians to the Battlefield: Incentives, Benefits, and Medical Care* (April 2008).

¹⁴ Memorandum from Linda M. Springer, Director, OPM, to Chief Human Capital Officers, *Consistent Compensation for Federal Civilians in Combat Zones* (June 10, 2008). This memorandum listed various legal authorities, such as § 1603 of Public Law No. 109-234 (granting federal agencies discretion to apply certain Foreign Service benefits to their employees), § 1101 of Public Law No. 110-181 (raising annual maximum limitations on premium pay), and § 1105 of Public Law No. 110-181 (authorizing payment of up to \$100,000 as a "death gratuity" in certain instances).

¹⁵ We use the term "medical benefits" to refer to any medical or dental treatment associated with travel to Iraq or Afghanistan, including medical screenings before and after deployment, as well as any benefits received under the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193.

medical issues that may emerge as a result of their deployment. It is based on work we conducted for our June 2009 report.¹⁶

To determine whether the six selected executive branch agencies have comparable policies on compensation and medical benefits for their deployed civilians, we reviewed applicable federal statutes, guidance, memoranda, and other policy documents, and we conducted a comparative analysis of these documents. We also interviewed agency officials, including officials at OPM, to identify their perspectives on the compensation and medical benefits to which civilians are entitled both during and following their deployments. To determine the extent to which these agencies have any implementation issues that may affect the compensation and medical benefits to which deployed civilians are entitled, we reviewed pre-deployment information and instructional documents pertaining to the compensation and medical benefits to which deployed civilians are entitled, as well as agency practices for medically screening civilians both before and following their deployments. We also conducted a Web survey of a probability sample of civilians who were deployed to Iraq or Afghanistan between January 1, 2006, and April 30, 2008, to gather information on their experiences.¹⁷ Specifically, this survey gathered, among other things, information from deployed civilians about instructional documents received, medical screening, and receipt of compensation and medical care during and following their deployments. To further explore issues that were identified by survey respondents, we conducted small group discussions with deployed DOD and State civilians serving in Iraq at the time of our review. We also conducted interviews with DOD and State officials, including medical personnel, and reviewed the universe of workers' compensation claims filed with the Department of Labor¹⁸ between January 1, 2006, and April 30, 2008, by civilians deployed to Iraq and Afghanistan, and we interviewed Labor officials concerning the workers' compensation claims process. To determine the extent to which

¹⁶ GAO-09-562.

¹⁷ We selected a sample of 297 from an initial population of 2,493 civilians whom the six executive agencies in our review identified as having been deployed during the period from January 1, 2006, to April 30, 2008. Some observations in the sample were deemed to be beyond the scope of our review, in part because the employee did not deploy to Iraq or Afghanistan during the prescribed timeframe; consequently, we are 95 percent confident that the actual population size is between 1,930 and 2,254. The results of the survey can be projected to the population from which the survey sample was selected.

¹⁸ These claims are filed under the Federal Employees' Compensation Act, 5 U.S.C. §§ 8101-8193.

agencies identify and track deployed civilians for medical purposes, we reviewed applicable agency guidance and interviewed knowledgeable agency officials. In addition, we obtained and reviewed lists of deployed civilians from each of the agencies. To assess the reliability of the data in these lists and workers' compensation claims, we (1) reviewed existing information about the systems that generated these lists and claims information and (2) interviewed agency officials knowledgeable about the systems and information. We determined that the information was sufficiently reliable for the purposes of our review.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

While Policies on Compensation Are Generally Comparable, Some Policy and Implementation Issues Affect the Amount, Accuracy, and Completeness of Compensation

Although policies concerning compensation for deployed civilians are generally comparable across agencies, we found some issues that affect the amount of compensation they receive—depending on such things as the agency's pay system or the civilian's grade/band level—and the accuracy, timeliness, and completeness of this compensation. Specifically, the six agencies included in our review provided similar types of deployment related compensation to civilians deployed to Iraq or Afghanistan. Agency policies regarding compensation for federal employees—including deployed civilians—are subject to regulations and guidance issued either by OPM or other executive agencies, in accordance with underlying statutory personnel authorities. In some cases, the statutes and implementing regulations provided agency heads with flexibility in how they administer their compensation policies. For example, agency heads are currently authorized by statute to provide their civilians deployed to combat zones with certain benefits—such as death gratuities and leave benefits—comparable to those provided the Foreign Service, regardless of the underlying pay system of the employee.

However, some variations in compensation available to deployed civilians result directly from the employing agency's pay system and the employee's pay grade/band level. For example, deployed civilians, who are often subject to extended work hours, may expect to work 10-hour days, 5 days a week, resulting in 20 hours of overtime per pay period over the course of a year-long deployment. A nonsupervisory GS-12 step 1 employee receives

a different amount of compensation for overtime hours than a nonsupervisory NSPS employee who earns an equivalent salary. Specifically, the NSPS nonsupervisory employee is compensated at a rate equivalent to 1.5 times the normal hourly rate for overtime while the GS nonsupervisory employee is compensated at a rate equivalent to 1.14 times the normal hourly rate for overtime hours.¹⁹

Additionally, deployed civilians may receive different compensation based on their deployment status. Agencies have some discretion to determine the travel status of their deployed civilians based on a variety of factors—DOD, for example, looks at factors including length of deployment, employee and agency preference, and cost. Generally though, deployments scheduled for 180 days or less are classified as “temporary duty” assignments, whereas deployments lasting more than a year generally result in an official “change of station” assignment. Nonetheless, when civilians are to be deployed long term, agencies have some discretion to place them in either temporary duty or change of station status, subject to certain criteria.²⁰ The status under which civilians deploy affects the type and amount of compensation they receive. For example, approximately 73 percent of the civilians who were deployed between January 1, 2006, and April 30, 2008, by the six agencies we reviewed were deployed in

¹⁹ Under this example, these employees are exempt from the Fair Labor Standards Act. Overtime rates are authorized by law for GS employees by 5 U.S.C. section 5542 and for NSPS employees by NSPS regulations at 5 CFR section 9901.362. The NSPS overtime factor is based on DOD's Civilian Personnel Manual, DOD 1400.25-M, subchapter 1830. The overtime factor for GS-12 step 1 is calculated by dividing the overtime hourly rate by the hourly rate found in OPM's hourly rate table for GS salary. Within the GS system, the overtime hourly rate for employees paid at a rate greater than the rate for GS-10 step 1, but less than the rate for GS-12 step 6, is equal to the hourly rate of basic pay for GS-10 step 1 multiplied by 1.5. The overtime hourly rate for employees paid at a rate equivalent to the GS-10 step 1 level or lower is 1.5 times their hourly rate, and for employees paid at the GS-12 step 6 level or higher, the overtime hourly rate is 1.0.

²⁰ GAO has stated that “Whether an assignment to a particular station is temporary or permanent is a question of fact to be determined from the orders under which the assignment is made, the character of the assignment, its duration, and the nature of the duties.” In DOD's Civilian Personnel Joint Travel Regulations Vpl. II, DDD states that the following criteria must be met for an assignment to be temporary duty (58 Comp. Gen. 465 (1989)): “(a) The duties to be performed are temporary in nature, (b) the assignment is for a reasonable time duration, and (c) temporary duty costs are lower than round-trip temporary change of station or permanent change of station expenses.” Joint Travel Regulations, vol. 2, ch. 4, para. C4430 (current as of Feb. 1, 2009).

temporary duty status²¹ and retained their base salaries, including the locality pay associated with their home duty stations. Civilians deployed to Iraq or Afghanistan as a change of station do not receive locality pay, but do receive base salary and may be eligible for a separate maintenance allowance which varies in amount based on the number of dependents the civilian has. The civilian's base salary also impacts the computation of certain deployment-related pays, such as danger pay and post hardship differential, as well as the computation of premium pay such as overtime. Consequently, whether a civilian's base salary includes locality pay or not can significantly affect the total compensation to which that civilian is entitled—resulting in differences of several thousand dollars.

As a result of these variations, deployed civilians at equivalent pay grades who work under the same conditions and face the same risks may receive different compensation. As mentioned previously, the Subcommittee on Oversight and Investigations, House Armed Services Committee, recommended in April 2008 that OPM develop a benefits package for all federal civilians deployed to war zones, to ensure that they receive equitable benefits. But, at the time of our review, OPM had not developed such a package or provided legislative recommendations. OPM officials stated that DOD had initiated an interagency working group to discuss compensation issues and that this group had developed some proposals for legislative changes. However, they noted that these proposals had not yet been submitted to Congress, and they do not, according to DOD officials, represent a comprehensive package for all civilians deployed to war zones, as recommended by the Subcommittee.

Furthermore, compensation policies were not always implemented accurately or in a timely manner. For example, we project that approximately 40 percent of the estimated 2,100 civilians deployed from January 1, 2006, to April 30, 2008, experienced problems with compensation—including not receiving danger pay or receiving it late, for instance—in part because they were unaware of their eligibility or did not know where to go for assistance to start and stop these deployment-related pays. In fact, officials at four agencies acknowledged that they have experienced difficulties in effectively administering deployment-related pays, in part because there is no single source delineating the

²¹ The approximately 73 percent includes both DOD civilians deployed for 180 days or less as well as employees deployed for more than 180 days. For civilians deployed more than 180 days, about 42 percent were deployed in temporary duty status and retained locality pay.

various pays associated with deployment. As we previously reported, concerning their military counterparts,²² unless deployed personnel are adequately supported in this area, they may not be receiving all of the compensation to which they are entitled.

Additionally, in January 2008, Congress authorized an expanded death gratuity—under the Federal Employees' Compensation Act (FECA)—of up to \$100,000 to be paid to the survivor of a deployed civilian whose death resulted from injuries incurred in connection with service with an armed force in support of a contingency operation.²³ Congress also gave agency heads discretion to apply this death gratuity provision retroactively for any such deaths occurring on or after October 7, 2001, as a result of injuries incurred in connection with the civilian's service with an armed force in Iraq or Afghanistan.²⁴ At the time of our review, Labor—the agency responsible for the implementing regulations under FECA—had not yet issued its formal policy. Labor officials told us that, because of the recent change in administration, they could not provide us with an anticipated issue date for the final policy. Officials from the six agencies included in our review stated that they were delaying the development of policies and procedures to implement the death gratuity until after Labor issues its policy. As a result, some of these agencies had not moved forward on these provisions.

We therefore recommended that (1) OPM oversee an executive agency working group on compensation for deployed civilians to address any differences and if necessary make legislative recommendations; (2) the agencies included in our review establish ombudsman programs or, for agencies deploying small numbers of civilians, focal points to help ensure that deployed civilians receive the compensation to which they are

²² GAO, *Military Pay: Army Reserve Soldiers Mobilized to Active Duty Experienced Significant Pay Problems*, GAO-04-911 (Washington, D.C.: Aug. 26, 2004); *Military Pay: Army National Guard Personnel Mobilized to Active Duty Experienced Significant Pay Problems*, GAO-04-413T (Washington, D.C.: Jan. 28, 2004); and *Military Pay: Army National Guard Personnel Mobilized to Active Duty Experienced Significant Pay Problems*, GAO-04-89 (Washington, D.C.: Nov. 13, 2003).

²³ Pub. L. No. 110-181 § 1105 (2008).

²⁴ 5 U.S.C. § 8102(a) states that the head of an agency may retroactively apply this provision in the case of an employee who died on or after October 7, 2001, and before the date of enactment of this section as a result of injuries incurred in connection with the employee's service with an armed force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

entitled; and (3) Labor set a time frame for issuing implementing guidance for the death gratuity. We provided a copy of the draft report to the agencies in our review. With the exception of USAID, which stated that it already had an ombudsman to assist its civilians, all of the agencies generally concurred with these recommendations. USAID officials, however, did not provide any documentation to support the establishment of the ombudsman position. In the absence of such documentation, we continue to believe our recommendation has merit. Finally, the Department of Labor has subsequently published an interim final rule implementing the \$100,000 death gratuity under FECA.²⁵

While Policies on Medical Benefits Are Generally Comparable, Some Issues Exist in Both Policies and Implementation

Although agency policies on medical benefits are similar, we found some issues with policies related to medical treatment following deployment and with the implementation of workers' compensation and post-deployment medical screening that affect the medical benefits of these civilians. DOD and State guidance provides for medical care of all civilians during their deployments—regardless of the employing agency. For example, DOD policies entitle all deployed civilians to the same level of medical treatment while they are in theater as military personnel. State policies entitle civilians serving under the authority of the Chief of Mission to treatment for routine medical needs at State facilities while they are in theater.

While DOD guidance provides for care at military treatment facilities for all DOD civilians—under workers' compensation—following their deployments, the guidance does not clearly define the “compelling circumstances” under which non-DOD civilians would be eligible for such care. Because DOD's policy is unclear, confusion exists within DOD and other agencies regarding civilians' eligibility for care at military treatment facilities following deployment. Furthermore, officials at several agencies were unaware that civilians from their agencies were potentially eligible for care at DOD facilities following deployment, in part because these agencies had not received the guidance from DOD about this eligibility. Because some agencies are not aware of their civilians' eligibility for care at military treatment facilities following deployment, these civilians cannot benefit from the efforts DOD has undertaken in areas such as post traumatic stress disorder.

²⁵ Claims for Compensation; Death Gratuity Under the Federal Employees' Compensation Act, 74 Fed. Reg. 41617 (Aug. 18, 2009).

Moreover, civilians who deploy may also be eligible for medical benefits through workers' compensation if Labor determines that their medical condition resulted from personal injury sustained in the performance of duty during deployment.²⁶ Our review of all 188 workers' compensation claims²⁷ related to deployments to Iraq or Afghanistan that were filed with the Labor between January 1, 2006, and April 30, 2008, found that Labor requested additional information in support of these claims in 125 cases, resulting in increased processing times that in some instances exceeded the department's standard goals for processing claims.²⁸ Twenty-two percent of the respondents to our survey who had filed workers' compensation claims stated that their agencies provided them with little or no support in completing the paperwork for their claims. Labor officials stated that applicants failed to provide adequate documentation, in part because they were unaware of the type of information they needed to provide. Furthermore, our review of Labor's claims process indicated that Labor's form for a traumatic injury did not specify what supporting documents applicants had to submit to substantiate a claim.²⁹ Specifically, while this form states that the claimant must "provide medical evidence in support of a disability," the type of evidence required is not specifically identified. Without clear information on what documentation to submit in support of their claims, applicants may continue to experience delays in the process.

Additionally, DOD requires deploying civilians to be medically screened both before and following their deployments. However, post-deployment screenings are not always conducted, because DOD lacks standardized procedures for processing returning civilians. Approximately 21 percent of DOD civilians who responded to our survey stated that they did not complete a post-deployment health assessment. In contrast, State

²⁶ Under FECA, any disability resulting from a war-risk hazard is generally deemed to have resulted from personal injury sustained while in the performance of duty. 5 U.S.C. § 8102(b).

²⁷ FECA claims by agency: DOD - 116; State - 32; Justice - 19; DHS - 5; USDA - 2; USAID - 1; other agencies not included in this review and claims where the agency is not identified - 13.

²⁸ Of these 125 cases, 74 were approved, 42 were denied, and 9 cases were still being processed at the time of our review.

²⁹ Labor defines "traumatic injury" as any wound or other condition of the body caused by external force, including stress or strain, caused by a specific event or incident within a single workday or shift.

generally requires a medical clearance as a precondition to deployment but has no formal requirement for post-deployment screenings of civilians who deploy under its purview. Our prior work has found that documenting the medical condition of deployed civilians both before and following deployment is critical to identifying conditions that may have resulted from deployment, such as traumatic brain injury.³⁰

To address these matters, we recommended that (1) DOD clarify its guidance concerning the circumstances under which civilians are entitled to treatment at military treatment facilities following deployment and formally advise other agencies that deploy civilians of its policy governing treatment at these facilities; (2) Labor revise the application materials for workers' compensation claims to make clear what documentation applicants must submit with their claims; (3) the agencies included in our review establish ombudsman programs or, for agencies deploying small numbers of civilians, focal points to help ensure that deployed civilians get timely responses to their applications and receive the medical benefits to which they are entitled; (4) DOD establish standard procedures to ensure that returning civilians complete required post-deployment medical screenings; and (5) State develop post-deployment medical screening requirements for civilians deployed under its purview. The agencies generally concurred with these recommendations, with the exception of USAID, which stated that it already had an ombudsman to assist its civilians. USAID officials, however, did not provide any documentation to support the establishment of the ombudsman position. In the absence of such documentation, we continue to believe our recommendation has merit.

Executive Agencies' Ability to Track Deployed Civilians Is Limited

While each of the agencies we reviewed was able to provide a list of deployed civilians, none of these agencies has fully implemented policies and procedures to identify and track its civilians who have deployed to Iraq and Afghanistan. DOD, for example, issued guidance and established procedures for identifying and tracking deployed civilians in 2006 but concluded in 2008 that its guidance and associated procedures were not being consistently implemented across the agency. In 2008 and 2009, DOD reiterated its policy requirements and again called for DOD components to

³⁰ GAO-06-1085.

comply.³¹ The other agencies we reviewed have some ability to identify deployed civilians, but they did not have any specific mechanisms designed to identify or track location-specific information on these civilians. As we have previously reported, the ability of agencies to report location-specific information on employees is necessary to enable them to identify potential exposures or other incidents related to deployment.³² Lack of such information may hamper these agencies' ability to intervene quickly to address any future health issues that may result from deployments in support of contingency operations. We therefore recommended that (1) DOD establish mechanisms to ensure that its policies to identify and track deployed civilians are implemented and (2) the five other executive agencies included in our review develop policies and procedures to accurately identify and track standardized information on deployed civilians. The agencies generally concurred with these recommendations, with the exception of USAID, which stated that it already had an appropriate mechanism to track its civilians. We disagree with USAID's position since it does not have an agencywide system for tracking civilians and continue to believe that our recommendation is appropriate.

Concluding Observations

Deployed civilians are a crucial resource for success in the ongoing military, stabilization, and reconstruction operations in Iraq and Afghanistan. Most of the civilians—68 percent of those in our review—who deploy to these assignments volunteered to do so, are motivated by a strong sense of patriotism, and are often exposed to the same risks as military personnel. Because these civilians are deployed from a number of executive agencies and work under a variety of pay systems, any inconsistencies in the benefits and compensation they receive could affect that volunteerism. Moreover, ongoing efforts within DOD and State to establish a cadre of deployable civilians further emphasizes that the

³¹ Memorandum from Patricia Bradshaw, Deputy Under Secretary for Civilian Personnel Policy, *Documentation of Department of Defense Civilian Employees Officially Assigned to Military Contingency Operations Overseas*, (Jun. 6, 2006); Memorandum from Brad Bunn, Director, Department of Defense Civilian Personnel Management Service, *Documentation of Department of Defense Civilian Employees Officially Assigned to Military Contingency Operations Overseas*, (Feb. 8, 2006); and DOD Directive 1404.10, *DoD Civilian Expeditionary Workforce* (Jan. 23, 2006).

³² GAO, *Defense Health Care: Improvements Needed in Occupational and Environmental Health Surveillance during Deployments to Address Immediate and Long-term Health Issues*, GAO-05-632 (Washington D.C.: Jul. 14, 2005).

federal government realizes the important role these federal civilians play in supporting ongoing and future contingency operations and stabilization and reconstruction efforts throughout the world. Given the importance of the missions these civilians support and the potential dangers in the environments in which they work, agencies should make every reasonable effort to ensure that the compensation and benefits packages associated with such service overseas are appropriate and comparable for civilians who take on these assignments. It is equally important that federal executive agencies that deploy civilians make every reasonable effort to ensure that these civilians receive all of the compensation and medical benefits to which they are entitled. These efforts include maintaining sufficient data to enable agencies to inform deployed civilians about any emerging health issues that might affect them.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the Subcommittee may have at this time.

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Mr. CONNOLLY. Ms. Fitzgerald.

STATEMENT OF MARILEE FITZGERALD

Ms. FITZGERALD. Thank you.

Good afternoon, Mr. Connolly, Mr. Bilbray, Mr. Cummings, and Ms. Norton. I am here today representing the Secretary of Defense and all of our civilian employees who deploy to austere environments like Iraq and Afghanistan. On their behalf, let me thank you for your strong support of our programs and benefits that help compensate and provide incentives for our deployed work force.

The Department of Defense civilian employees play an integral role in supporting our military members around the globe in all types of operations. Since 2001, more than 41,000 civilians have served or are currently serving in direct support of our U.S. military operations, including 26,000 to Iraq and 7,900 to Afghanistan. We are proud of our brave men and women who have served. Their sacrifice, service, and experience are valued, respected, and recognized as career-enhancing.

Regrettably, our work force is not immune from the inherent risks of these missions. Some of our employees and their families have made the ultimate sacrifice for our country. For these brave injured and fallen civilians, for all their colleagues who have answered the call to serve, and for all those who will answer the call in the future, the Department is committed to ensuring these employees have the highest level of support and care as may be needed to serve our noble mission.

The Department has learned that the dynamic and asymmetric 21st century mission challenges require greater and more expeditionary capability within our work force. In response to these expeditionary missions, the Department developed a new framework through which an appropriately sized subset of the Department of Defense civilian work force is preidentified to be organized, trained, and equipped in a manner that facilitates the use of their capabilities for these operational requirements. These employees are collectively known as the Civilian Expeditionary Workforce [CEW].

We have learned that our employees volunteer for these types of assignments primarily because of a desire to serve our country, to witness their results on the ground, to make a difference, and to engage in this type of work. They believe it is an honor and a privilege to serve our country and to support our warfighters, and, in return, they bring back broadened perspectives, critical experiences, and a deeper understanding of their role in support of our expanding missions. The men and women who answer this call are making a critical difference.

Building a strong civilian expeditionary work force, however, also requires promoting the right incentives and benefits to help compensate for the inherent risks of these missions. Thanks to the strong support from Congress, we have been able to offer many additional financial incentives. They certainly include the 35 percent danger pay allowance and 35 percent post differential, and allowances and benefits and gratuities comparable to those provided by the Foreign Service. That benefit was offered to all Federal civilian employees.

They include such benefits as enhanced death gratuity, travel, home leave, and emergency visitation travel, and rest and recuperation trips. Our DOD civilians singled out the authorized R&R trips and the Foreign Service benefits as particularly critical to maintaining a level of effectiveness during these extended months of employment.

We've have enhanced FEGLI options from the Congress, approved premium pay cap waivers, elimination of the aggregate pay caps. This incentive permits our deployed civilians to maximize their earning power in the year in which they are serving. In these economic times, this incentive has been most valued and appreciated.

The Secretary of Defense Global War on Terrorism medal and the Defense of Freedom medal for those who are injured or killed in theater. This one is similar to those of the military's Purple Heart.

In terms of medical screening and medical care for deployed civilians, the Department does take seriously the need to protect the health of our deployed civilians and to medically assess all those who serve our expeditionary requirements. And, as was stated earlier, prior to deploying all DOD civilians are required to obtain a physical examination. In addition, they are required to have a pre-deployment health assessment within 60 days prior to their departure. These two pieces of information combined provide a baseline for wellness. Upon their return from deployment, the DOD civilians are required to have a post-health assessment within 30 to 60 days following their return from deployment and a health assessment and reassessment within 90 and 100 days from their return.

We have also established the Armed Forces Health Surveillance Center, which now collects these data and is able to track and monitor the completion of both the pre- and post-health assessments.

The Department of Defense-established medical treatment policies assure civilians who become ill, contract diseases, or who are injured or wounded while deployed in support of U.S. military forces engaged in hostilities receive medical evacuation and health care treatment and services at our military facilities at no cost and at the same level and service.

The Department looks forward to the opening of the National Intrepid Center of Excellence on the campus of the National Naval Medical Center in Bethesda, which will be the premier health care resource in the Department of Defense for psychological disorders as well as PTSD and traumatic brain injury.

And, finally, we must address the critical role families play in support of our DOD civilians who deploy. The Department continues to strengthen its capacity to serve families of DOD civilians better. We require family care plans to ensure that there are powers of attorney in effect, designated beneficiaries, to ensure that our families are aware of and understand the benefits and entitlements provided to them through their spouses' employment.

Mr. CONNOLLY. Thank you, Ms. Fitzgerald.

Ms. FITZGERALD. Thank you.

[The prepared statement of Ms. Fitzgerald follows:]

STATEMENT OF
MARILEE FITZGERALD
ACTING DEPUTY UNDER SECRETARY OF DEFENSE
(CIVILIAN PERSONNEL POLICY)
DEPARTMENT OF DEFENSE

before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

A CALL TO ARMS: A REVIEW OF BENEFITS
FOR DEPLOYED FEDERAL EMPLOYEES

September 16, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

On behalf of the Secretary of Defense, Robert M. Gates, I would like to thank you for inviting the Department of Defense (DoD) to appear at this hearing today to discuss the benefits available to our civilian employees deployed to austere environments like Iraq and Afghanistan. The Department appreciates the interest of Congress in ensuring that a comprehensive employment package is available to sufficiently and appropriately compensate deploying civilians for their dedication and sacrifice.

DoD civilian employees play an integral role in supporting our military members around the globe in all types of operations. Defense civilians have supported wartime and contingency operations throughout American history. Since 2001, more than 41,000 civilians have served or are currently serving in direct support of U.S. military operations in combat zones, including approximately 26,000 to Iraq and 7,900 to Afghanistan. Alongside of our military men and women, these

civilians have been called upon to support combat operations, expanded security, stability, transition and reconstruction operations (SSTRO); and assist with humanitarian, emergency, and other contingency operations. We are proud of our brave men and women who participate and support these types of complex operations and expeditionary requirements. Their sacrifice, service and experience are valued, respected and recognized as career enhancing. Some of our brave and dedicated employees and their families have made the ultimate sacrifice for our country while serving our DoD missions. For these brave injured and fallen civilians, for all their colleagues who have answered the call to serve, and for all those who will answer in the future, the Department is committed to ensuring these employees have the highest level of support and care as may be needed to serve our noble mission.

We have learned from focus group sessions the reasons why our employees volunteer for these types of assignments. The reasons vary, but may include a desire to serve our Country, witness results on the ground, and engage in this type of mission-focused work. They state that it is an honor and a privilege to serve our Country and to support our war fighters through their deployments. In return, our DOD civilians bring back broadened perspectives, critical experiences, and a deeper understanding of their role in support of DoD's expanding missions. The men and women who answer this call are making a critical difference in the support of the Department's U.S. forces and interagency and coalition partners.

A NEW PARADIGM

The dynamic and asymmetric 21st century mission challenges require greater and more predictable expeditionary capability within the DoD's civilian workforce for a number of reasons:

- Help reduce stress on our military personnel – a top Department priority
- Leverage civilian talent to support non-warfighting requirements
- Grow and mature the competencies as an institutional capability for future missions
- Develop a reach back capability for current and future requirements

These challenges required significant organizational structural changes to embed a civilian capability that is ready, trained, and prepared to participate in and support military operations swiftly and competently, and one that provides for competent and compassionate continuum of support and care for our deployed civilians.

In response to these expeditionary missions, the Department developed a new framework through which an appropriately sized subset of the DoD civilian workforce is pre-identified to be organized, trained and equipped in a manner that facilitates the use of their capabilities for operational requirements. These requirements are typically away from the normal work locations of DoD civilians, or in situations where other civilians may be evacuated to assist military forces where the use of DoD civilians is appropriate. These employees are collectively known as the Civilian Expeditionary Workforce (CEW).

The CEW consists of positions that are designated as Emergency-Essential and Non-Combat Essential positions, and employee capabilities that are referred to as, “capability-based” DoD employee volunteers, who are organized, trained, and

equipped for rapid response and quick assimilation in support of DoD operations. The model also provides for the maintenance of a resume bank of individuals outside government, including former DoD employees, to serve expeditionary requirements or to fill backfill requirements while employees are deployed. The Department has standardized its personnel policies for such areas as designation of positions, pre and post deployment physicals and psychological health assessments, job return rights, benefits and incentives. We are currently developing standardized personnel procedures such as readiness and deployment indices, training curriculum and simulation exercises and other administrative preparedness requirements.

These efforts have been informed by a comprehensive review of DoD and interagency human capital policies, practices, benefits and incentives supporting deployed civilians. We launched DoD Working Groups and Design Teams, conducted Employee Focus Groups sessions, partnered with our interagency colleagues to form an Interagency Working Group for the standardization of benefits and incentives, conducted on-site visits to Iraq (2007-2008), and reviewed lessons learned. This comprehensive initiative resulted in the approval of new policies institutionalized in Department of Defense Directive 1404.10, DoD Civilian Expeditionary Workforce, published on January 23, 2009, and the proposal of numerous additional initiatives.

To operationalize the new framework, the Department stood up the CEW Readiness Unit, a new organizational entity within the DoD Civilian Personnel Management Service (CPMS), whose mission is to assure the readiness (competencies and capabilities) of the civilian workforce to meet mission requirements. The CEW Readiness Cell serves as a central operational Executive Agent with management authority to recruit and fill mission critical Joint Task Force (JTF) positions and serves as a personnel readiness and planning authority

to source combatant command validated and approved individual augmentation (IA), and Request for Forces (RFF) civilian expeditionary requirements. The Readiness Unit recently assigned a case manager to each deployed civilian who helps shepherd our employees through the pre-deployment, deployment and post-deployment process.

Among other organizational changes to support the CEW, the Department has installed a process to ensure the Total Force capability is considered when filling expeditionary requirements. Strategic Human Capital advisors are planned for all our geographic commands to assist and provide advice on civilian capabilities. Two Strategic Human Capital advisors are currently on board at the U.S. Central Command and U.S. European Command. Further, we have adopted a civilian workforce planning process that includes the use of functional community managers who will monitor the readiness of our workforce and maintain visibility of workforce strength, capability and availability for deployment.

Building a strong DoD civilian expeditionary workforce also requires promoting the right incentives and benefits to entice applicants for jobs with expeditionary missions and to compensate for the inherent risks and asymmetric work environments.

PAY AND INCENTIVES

Thanks to strong support from the Congress, we have also been able to offer additional financial incentives to our Federal civilian employees serving in Iraq and Afghanistan. As part of their compensation package, deployed civilians assigned to Iraq and Afghanistan receive a 35 percent Danger Pay allowance, a 35 percent Foreign Post Differential, for a total of an additional 70 percent of their basic pay.

In addition, I also want to thank the Congress for its support in passing Public Law 109-234, Section 1063, which authorized agencies to provide allowances, benefits, and gratuities comparable to those provided to members of the Foreign Service. These benefits were extended in last year's National Defense Authorization Act through Fiscal Year 2011. They include such benefits as an enhanced death gratuity, travel, home leave, emergency visitation travel, and rest and recuperation (R&R) trips. Our DoD civilians singled out the authorized R&R trips (long-standing practice for members of the Foreign Service) as particularly critical to maintaining a personal momentum, motivation, and level of effectiveness during extended deployments of many months. The Department, under its own authority, authorized in August 2008, up to 10 workdays of excused absence for DoD civilians employees assigned to Iraq or Afghanistan during each of the authorized R&R trips, not to exceed a total of 20 workdays during a 12 month deployment.

Further, the Department issued implementing policy for DoD employees in April 2007 (for death benefits) and the opportunity to elect or increase coverage of Federal Employee Life Insurance coverage life insurance if such coverage had been previously waived. Particularly relevant and meaningful are those authorities for the death gratuity equivalent to that provided to Foreign Service members (one year's salary), or the enhanced death gratuity granted in NDAA 2008 of \$100,000.

Since 2005, the Department has requested and received authority to temporarily increase the limitation on premium pay earnings under section 5547 of title 5 United States Code. This authority, applicable to most Federal civilian employees assigned to combat zones, increases the limitation on premium pay earnings to the salary of the Vice President (\$227,300 for 2009). This premium pay cap authority has been implemented in Iraq and Afghanistan and proven to be an important incentive to DoD employees who perform work outside of normal duty hours.

The Department is also appreciative of the most recent legislation to temporarily eliminate the aggregate limitation on pay (established in section 5307 of title 5 U.S.C.) so that these employees can receive immediately the compensation they have earned. This incentive alone permits deployed civilians to maximize their earning power in the year in which they serving. In these economic times, this incentive is most valued and appreciated.

Additionally, employees serving in Iraq and Afghanistan for 30 consecutive days or 60 non-consecutive days are eligible for the Secretary of Defense Global War on Terrorism (GWOT) medal. This medal is a campaign medal and was created to recognize and honor the contributions of our DoD civilians in direct support of the Department's contingency operations. Those who pay the ultimate sacrifice and are injured or killed in theater may be eligible to receive the Defense of Freedom medal. This medal is the civilian equivalent of the military's Purple Heart.

MEDICAL SCREENING AND CARE FOR DEPLOYED CIVILIANS

The Department takes seriously the need to protect the health of deployed civilian employees and to medically assess all those who serve expeditionary requirements. Prior to deploying, DOD civilian employees are required to obtain a physical examination. The purpose of this examination is to determine the presence of any nondeployable medical condition. Combatant Commands identify nondeployable medical conditions for deployment operations, along with required immunizations. These employee records are reviewed as part of our civilian employee's pre-deployment processing. If any nondeployable medical condition is identified during this review, the employee is not permitted to deploy. Further, all DoD civilians are required to have a pre-deployment health assessment within 60

days prior to departure. These records provide a baseline for the medical screen that is conducted upon the employee's return from deployment. Upon return from the deployment, DoD civilians are required to have a post-health assessment within 30 to 60 days following their return from the deployment, and a health reassessment between 90 and 180 days of return from the deployment in accordance with DoDI 6490.03, "Deployment Health," August 11, 2006. The Armed Forces Health Surveillance Center is the central repository for receiving, reviewing and reporting of health issues during and post deployment.

The Department of Defense has established medical treatment policies that ensure civilians who become ill, contract diseases, or who are injured or wounded while deployed in support of U.S. military forces engaged in hostilities, receive medical evacuation and health care treatment and services in military treatment facilities (MTFs) at no cost and at the same level and scope provided to military personnel.

The Department recently established the DoD Centers of Excellence for Psychological Health and Traumatic Brain Injury (DCoE). The centers are designed to focus on quality programs and advanced medical technology to provide unprecedented expertise in psychological health and traumatic brain injuries. The goal is to assure that military and civilian personnel who have deployed are supported with standardized and comprehensive screening, diagnosis, and care for all levels of traumatic brain injury and post-traumatic stress disorder. The Centers ensure that the Military Departments incorporate best practices in their programs to assess, validate, oversee, and facilitate prevention, resilience, identification, treatment, outreach, rehabilitation, and reintegration programs for psychological health and traumatic brain injury to ensure the Department meets the needs of the nation's military communities and their families.

Deployed DoD civilian employees who were treated in theater continue to be eligible for treatment in an MTF or civilian medical facility for compensable illnesses, diseases, wounds, or injuries under the Federal Employees' Compensation Act (FECA), administered by the Department of Labor's Office of Workers' Compensation Programs (DOL OWCP), upon their return at no cost to the employee. DoD deployed civilians who have compensable illnesses, diseases, wounds, or injuries under the FECA also are eligible for treatment in an MTF or civilian medical facility at no cost to the employee.

Since 2004 DoD has been providing DoD civilians the capability of filing Traumatic Injury (CA-1) or Occupational Disease (CA-2) claims electronically. One feature of that electronic filing process is that employees who file traumatic injury claims obtain immediate written information and instructions regarding the medical evidence needed in a FECA claim. This information can be immediately made available to treating physicians and other health care providers. Establishing the appropriate evidentiary documentation early on is a critical step in expediting the review and processing of the injury claims.

The Department also has worked with our Department of Labor colleagues to improve and streamline service. The Department of Labor instituted a special series of case file numbers for the claims of deployed civilians, and DOL OWCP has assigned these cases to an office dedicated to reviewing, adjudicating, and processing FECA civilian injury claims for Iraq and Afghanistan.

On September 23, 2008, the DOL OWCP signed a letter agreeing to certain principles regarding the processing of deployed civilian workers' compensation claims. Under this agreement, DOL agreed that prior to issuing a denial to any DoD employee injured in a war zone, they will notify the DoD Civilian Personnel Management Services (CPMS) Injury & Unemployment Compensation Division if

evidence is not sufficient. This special handling has resulted in faster and better responses to employees.

MEDICAL CARE FOR ALL Non DoD FEDERAL CIVILIANS

The Department also provides emergency care in theater to other Federal civilian employees as may be needed. Approving medical care at MTFs for non-DoD U.S. Government civilian employees is outlined in DoD policy guidance memorandum of September 24, 2007 that states: "The Under Secretary of Defense (Personnel and Readiness) under compelling circumstances is authorized to approve additional eligibility for care in MTFs for other U.S. Government civilian employees who become ill, contract diseases, or are injured or wounded while forward deployed in support of U.S. military forces engaged in hostilities, or other DoD civilian employees overseas."

FAMILY SUPPORT AND ASSISTANCE

The Department continues to strengthen its capacity to serve families of DoD civilians better. We require family care plans to ensure that our families are aware of and understand the benefits and entitlements provided to them through their spouses' employment. Our DoD Components offer outreach and assistance during deployments and ensure that a full continuum of care is provided. There are also an array of benefits and services available to the families of deployed civilians including child care and development, casualty assistance, stress management, counseling, education for family members, housing and moving support, legal assistance, personal financial management, special needs support, spouse employment, suicide prevention, transition assistance, and many more. Several programs also provide resources for families with young children experiencing the effects of deployment or changes to a parent due to a combat-related injury.

Information on these resources and support services is readily available at MilitaryHOMEFRONT (<http://www.militaryhomefront.dod.mil>), the Department of Defense Website for official information, policy and guidance designed to help DoD civilians and their families. There are special programs available to both our deployed military and civilian personnel in our Department of Defense Education Activity (DoDEA) schools, including using technology to take high school graduations.

Curriculum and training are being designed specifically for our families of deployed DoD civilians employees and is intended to deepen their understanding of deployment requirements, benefits and entitlements, as well as issues likely to be faced by the employee during and following a deployment.

THE WAY FORWARD

As we learn through our continued engagement, improvements in benefits and incentives are still needed for more uniformity and consistency of similarly situated Federal civilians. As I referred to earlier in my testimony, the Interagency Working Group reviewed practices and authorities for deployed civilians. Representatives from the Office of Personnel Management and the Department of State (DoS) participated in the Working Group sessions as well as many agencies and components within DoD. The Working Group is developing several proposals with a goal of producing an incentive and benefit package that would apply to all federal civilians deployed to areas of armed conflict, creating greater equity among all deployed civilians.

CONCLUSION

In closing, I want to reiterate DoD's commitment to working with Congress and other agencies to ensure that all civilians who deploy to areas of armed conflict receive the necessary medical care and the incentives and benefits that compensate them for the inherent risks of deployment. An agile civilian workforce with expeditionary capabilities prepares the Department to prevail in its national security endeavors. These challenges almost always are addressed in collaborative partnership with other Federal agencies and coalition partners. We believe that it is the responsibility of all senior leaders at all levels of the Department to see that policies and procedures are designed and implemented to create the quality and caliber of DoD civilian employees needed to meet the Department's 21st century mission requires. We are grateful for the support of Congress in helping us to achieve this mission imperative.

Thank you again for your continued interest in our deployed civilians and the opportunity to speak with you today. I would be happy to respond to any questions you may have.

Mr. CONNOLLY. And then we will get on to a round of questions and answers.

Ambassador Browning.

STATEMENT OF STEVEN A. BROWNING

Mr. BROWNING. Thank you, Mr. Connolly.

Mr. Chairman, Ranking Member Bilbray, Ms. Norton, Mr. Cummings, thank you very much for this opportunity to testify before you today. I appreciate your interest in the State Department's efforts, as well as those of our sister agencies, to support our employees serving in difficult and dangerous places, including Afghanistan and Iraq. I look forward to sharing with you some of the concrete steps we have taken to address the critical needs of our employees and their families.

Under the leadership of Secretary Clinton, our men and women are working to renew America's leadership through a diplomacy that enhances our security, advances our interests, and demonstrates our values. They are doing inspiring work under difficult conditions.

Currently there are over 900 positions where no family members or only certain categories of family members may reside because of dangerous conditions or other severe hardships. In 2001, there were approximately 200 such positions. This steady increase in assignments to difficult and dangerous regions reflects the Department's concerted effort to send the Foreign Service wherever it is most needed. Our men and women are answering the Nation's call to service and putting their lives at risk for the American people.

The call to serve has been a hallmark of the Foreign Service. We have fully staffed our missions in Iraq and Afghanistan with volunteers, volunteers who have stepped forward to serve in these highly dangerous yet critical missions.

In recognition of their service, we offer a broad package of benefits, incentives, and support structures. This package has improved greatly since when I served in Iraq in 2004 and 2005.

Mr. Chairman, let me share with you some of the benefits we now offer to our employees serving in Afghanistan and Iraq that other agencies may also be able to extend to their employees: hardship and danger pay allowances, overtime or an equivalent payment, rest and recuperation or R&R trips, pay cap increases, and onward assignment preferences.

Mr. Chairman, we also know that the medical and mental well-being of our employees is critical, as is support for their families during and after their assignments. To address those needs we have expanded the medical services available pre-departure, at post, and after completion of the assignment, and we expanded the scope of our Family Liaison Office to provide support to employees and family members during an unaccompanied tour. All employees assigned to Afghanistan and Iraq attend pre-departure training that familiarizes them with security issues unique to combat zone assignments. It alerts them to the causes and the signs of stress-related conditions, and it provides them with techniques for managing the stress of being in a war zone.

Following any high-stress assignment, we conduct a mandatory high-stress outbrief that helps employees recognize posttraumatic

stress disorder. Our Office of Medical Services established a Deployment Stress Management Program with a board-certified psychiatrist to serve as director, two social workers, and an administrative assistant. Additional mental health personnel have been assigned to the health units in Baghdad and Kabul.

Employees who are identified as possibly suffering from stress-related disorders and who require treatment that is not available locally are assigned to a 6- to 7-week program of treatment conducted by our medical office. To support essential continued monitoring, we have developed an assessment system for Department of State employees who have served in combat zones to screen for PTSD through our Deployment Stress Management Program, and our Family Liaison Office has expanded in size to work with our families while the employee is serving in an unaccompanied tour.

We are currently working with our colleagues at the Office of Personnel Management and the Department of Defense to examine the compensation benefits available to deployed civilians to ensure that it meets our needs for recruiting and retention. If changes are needed, the administration will put forth a comprehensive proposal to address the issues identified with the goal of regularizing authorities across the agencies. This interagency approach has made considerable progress, and we look forward to working with Congress to support all Federal civilian employees serving in zones of armed conflict.

In conclusion, Mr. Chairman, we believe that our employees and their families deserve comprehensive support before, during, and after their overseas assignments. The need is particularly great for those serving at our most difficult and dangerous posts. The Department of State has worked hard to provide benefits and programs that support our employees, but we recognize that our work may never be truly done as we adapt to a changing world. Thank you for providing me with this opportunity to appear before you and the members of the subcommittee, and I look forward to receiving your questions. Thank you.

Mr. CONNOLLY. Thank you.

[The prepared statement of Mr. Browning follows:]

**STATEMENT OF AMBASSADOR STEVEN A. BROWNING
PRINCIPAL DEPUTY ASSISTANT SECRETARY
BUREAU OF HUMAN RESOURCES
DEPARTMENT OF STATE**

Before the

**SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE, AND
THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

On

**A CALL TO ARMS: A REVIEW OF BENEFITS FOR DEPLOYED FEDERAL
EMPLOYEES**

September 16, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee, thank you for this opportunity to testify before you today. I appreciate your interest in the State Department's efforts – as well as those of our sister agencies, including USAID, to support our employees serving in dangerous and difficult places, including Afghanistan and Iraq. I look forward to sharing with you some of the concrete steps we have taken to address the critical needs of our employees and their families.

Under the leadership of Secretary Clinton, our dedicated men and women are working around the world to renew America's leadership through a diplomacy that, advances our interests, demonstrates our values, and enhances our security. They are doing inspiring work under increasingly difficult conditions. Currently, there are over 900 positions where no family members, or only certain categories of family members, may reside because of dangerous conditions or other severe hardships. In 2001, there were approximately 200 such positions. This steady increase in assignments to difficult and dangerous regions reflects the Department's concerted effort to send the Foreign Service wherever it is most needed.

Many of our colleagues have made the ultimate sacrifice while serving overseas. Just last week, members of the State Department family came together to remember Terry Barnich, a colleague lost last May when his vehicle struck an improvised explosive device (IED). Terry served in Anbar Province, one of the most dangerous places in Iraq, because he knew his job was critical to furthering our foreign policy there. The Department is committed to ensuring that dedicated employees like Mr. Barnich have all the support they need to carry out our important mission and we appreciate the support from Congress that makes it possible.

SUPPORTING SERVICE IN AFGHANISTAN AND IRAQ

The call to serve has been a hallmark of the Foreign Service. We have fully staffed our missions in Iraq and Afghanistan with volunteers who have stepped forward to serve in these highly dangerous, yet critical missions. In recognition of their service, we offer a broad package of benefits and incentives. This package has improved since when I served in Iraq in 2004 and 2005.

Let me share with you some of the benefits we now offer to our employees serving in Afghanistan and Iraq that other agencies may also be able to extend to agencies. Employees at both posts receive the maximum hardship and danger pay allowances, for a total of an additional 70% of an employee's basic pay. All employees except political appointees, Senior Foreign Service, and the Senior Executive Service receive overtime, or an equivalent payment, to compensate for the expected long hours that extend the work week far beyond 40 hours. Employees are also offered several Rest and Recuperation (R&R) trips during their one-year tours and can choose whether to return to the U.S. or take them in the region. We also offer administrative leave to facilitate employees' ability to take their R&R trips. With Congressional support, we were able to overcome two issues - the annual premium pay cap and the aggregate pay cap for eligible employees serving in Iraq and Afghanistan, both of which limit the amount of benefits an employee is able to receive.

Not all of our benefits are directly related to the pocketbook. We also instituted certain incentives that are specific to the Foreign Service such as enhancing an employee's opportunity to obtain a desirable follow-on assignment. Moreover, the medical and mental well-being of our employees is critical, as is support for their families during and after their assignments. To address those needs, we have expanded the medical services available pre-departure, at post, and after completion of the assignment and we expanded the scope of our Family Liaison Office to provide support to employees and family members during an unaccompanied tour.

**MEDICAL AND MENTAL HEALTH:
RESPONDING TO THE GROWING NEED BECAUSE OF HIGH STRESS POSTS**

The Department of State is operating under a new paradigm in managing diplomatic affairs and, as a result, our employees and their families are being exposed to stress during assignments similar, at times, to that experienced by military personnel. To build the capacity of our employees to recognize and handle that stress effectively, all employees assigned to Afghanistan and Iraq attend pre-departure training that familiarizes them with security issues unique to combat zone assignments, alerts them to the causes and the signs of stress-related conditions, and provides them with techniques for managing the stress of being in a war zone, as well as contacts they can reach out to if they feel that they are not able to cope with the pressure. Following any high stress assignment—including, but not limited to, those in Afghanistan and Iraq—the Foreign Service Institute conducts a mandatory “High Stress Outbrief” that helps employees recognize Post Traumatic Stress Disorder (PTSD) and offers a clinically validated questionnaire survey to assess the symptoms of PTSD.

Recognizing that more was needed, our Office of Medical Services (MED) established a Deployment Stress Management Program (DSMP) with a board-certified psychiatrist to serve as Director, two social workers and an administrative assistant. That small unit has a large task but, working with partners, strives to develop the resiliency of those assigned to high stress posts to help prevent psychological harm. This unit also promotes early detection of stress-related disorders and appropriate treatment.

The unit is not working alone. Additional mental health personnel have been assigned to the Health Units in Baghdad and Kabul, supported by our regional psychiatrists in Amman and New Delhi. They are tasked not only with providing strategies for coping with stress but also with providing ongoing assessments and treatment of our personnel.

Employees who are identified as possibly suffering from stress-related disorders and who require treatment that is not available locally are assigned to a six- to seven-week program of treatment conducted by MED. The goal of the program is to enable the majority of participants to take on a work assignment following the program. Those who require additional treatment are referred to the Office of Workers' Compensation Programs (OWCP). Among those deployed to combat zones, five employees have required treatment for PTSD under the Federal Employees' Compensation Act (FECA). All were diagnosed and treated before the establishment of our Deployment Stress Management Program (DSMP). Any such deployed employee who sustains physical or emotional injury in performance of duty may seek assistance from the State Department in filing a claim with OWCP; an injured employee would be entitled to a variety of FECA benefits including medical, wage loss and vocational rehabilitation benefits under the FECA program.

To support essential continued monitoring, we have developed an assessment system for Department of State employees who have served in combat zones to screen for PTSD through our Deployment Stress Management Program (DSMP).

**SUPPORT FOR EMPLOYEES AND THEIR FAMILIES:
AGHANISTAN, IRAQ AND OTHER UNACCOMPANIED POSTS**

With 18 posts around the world now designated by State as "unaccompanied" or "partially unaccompanied" posts, we are determined to create conditions and provide support services intended to minimize the difficulties employees invariably face when separated from

their families for extended periods. For instance, our Family Liaison Office (FLO) established dedicated positions for an Unaccompanied Tours (UT) Support Officer and an Unaccompanied Tours (UT) Program Specialist to work with our families while the employee is serving in an unaccompanied tour. FLO's UT Support Program provides a single point of contact for information, referrals, emotional support, and assistance through personal consultations, e-mails, newsletters, phone calls, print and online publications, and group briefings.

To help alleviate the stresses and strains of service at unaccompanied posts, we contracted with MHN (formerly Managed Health Network) to provide 24/7 access to a customized Web portal, telephone hotline, and face-to-face counseling sessions with a clinician for family members residing outside the Washington, D.C. area. To provide additional support to children, we developed individualized, age-appropriate handbooks to help State Department children understand and cope with the stress of having a parent serving on an unaccompanied tour. We are also continuing to provide medals and certificates of recognition to children of employees serving in unaccompanied posts. To assess and improve our programs, this fall we are surveying affected employees and family members to see how we can do even better.

LOOKING AHEAD

We are currently working with our colleagues at the Office of Personnel Management and the Department of Defense to examine the compensation benefits available to deployed civilians to ensure that it meets our needs for recruiting and retention. If changes are needed, the Administration will put forth a comprehensive proposal to address the issues identified, with the goal of regularizing authorities across the agencies. This interagency process has made considerable progress and we look forward to working with Congress to support federal civilian employees serving in zones of armed conflict.

CONCLUDING REMARKS

In conclusion, Mr. Chairman, we believe that our employees and their families deserve comprehensive support before, during, and after their overseas assignments. The need is particularly great for those serving at our most difficult and dangerous posts. The Department has worked hard to provide benefits and programs that support our employees, but we recognize that our work may never be truly done as we adapt to a changing world. Our employees deserve nothing but the best because that is what they give to our country.

Thank you for providing me with this opportunity to appear before you and the members of the subcommittee.

Mr. CONNOLLY. Just an advisory. I am hopeful that we can hear the last two pieces of testimony before we break for votes. Votes are going to be called very shortly, they are at the last votes of the day, so we will take an appropriate break when we are notified of that and come back. Forgive the imposition, but it is the way of the world here in the House of Representatives.

Mr. Mikowicz.

STATEMENT OF JEROME D. MIKOWICZ

Mr. MIKOWICZ. Representative Connolly, Delegate Norton, Representative Bilbray, on behalf of our Director John Berry, I want to thank you for inviting the Office of Personnel Management at this hearing today and for your commitment to Federal pay and benefits. We are deeply grateful for the service of Federal civilian employees deployed to areas of armed conflict. They put their lives in danger, and they work under extraordinary challenges to get the job done. OPM is committed to ensuring the government has fair and accurate compensation necessary to attract and retain an effective civilian work force.

Federal civilian employees who are deployed to work in Iraq and Afghanistan and other overseas locations are entitled to compensation that is controlled by three factors, and these three factors influence the application of pay and benefits.

First, deployed civilians continue to serve under normal pay system, and most pay and benefits are across the board, but some are entitlements, and some are discretionary flexibilities, but the flexibilities are determined on a case-by-case basis. Entitlements include things like annual pay adjustments, step increases, overtime, and leave. Flexibilities are applied on a case-by-case basis. For example, the use of recruitment, retention, and relocation incentives are discretionary and may vary based on staffing needs.

The rules provide for some exceptions overseas. For example, since deployment to a war zone is considered a life event, employees have an opportunity to elect different health insurance coverage or enhanced insurance coverage.

The second factor is that multiple pay systems exist at home and overseas, and employees working side by side in close quarters in combat zones become very aware of these differences. These differences are often based on different mission and work force requirements and are the result of separate laws that have been authorized over many years. However, current law does allow agencies not otherwise covered by the Foreign Service Act to provide certain Foreign Service benefits to their employees serving in Iraq and Afghanistan, and this has been very helpful.

The third factor is that the standardized regulations administered by the Secretary of State do provide a common framework for payment of allowances and differentials to all civilian employees overseas. Such payments include danger pay and post hardship differential, which, combined, are worth 70 percent of basic pay in Iraq and Afghanistan.

OPM itself administers two special temporary provisions affecting most civilian employees in Iraq and Afghanistan, and we are grateful that Congress has provided them. First, OPM administers a waiver that allows a higher premium pay cap ceiling on the

amount of basic pay plus overtime and other premium pay. The higher cap permits the payment of premium pay that otherwise would not have been payable.

Second, OPM also administers a waiver of the aggregate pay limitation, which means that in addition to base pay, employees can receive all of their Title 5 payments the year they earn it instead of having it rolled over to following calendar year. Normally the limit is the rate for Level I of the Executive Schedule, which is 196,700 currently.

Now I would like to comment on some OPM initiatives. In June 2008, we issued a memorandum to Agency Chief Human Capital Officers, describing the existing pay and benefits available to civilian employees working in combat zones. OPM strongly urged Federal agencies to become informed of and to take full advantage of those authorities.

In September 2008, OPM wrote to the Committees on Armed Services in the House and Senate concerning the National Defense Authorization Act. OPM supported providing appropriate benefits to employees in combat zones and the extension of existing temporary authorities. We continue to work collaboratively with DOD and State and other agencies to determine how we can provide better and more consistent pay and benefits, and this is a work in progress.

So, in conclusion, for the changes that we find are needed, the administration will put forth a comprehensive proposal to address the issues identified. We believe that the outcome of this process will also help assure greater consistency in the compensation of employed civilians. We want to do all we can to ensure that the civilian employees who put their lives on the line for the American people are appropriately rewarded and supported by the Federal Government as their employer.

Thank you for the opportunity to discuss this important issue. I will be happy to respond to your questions.

Mr. CONNOLLY. Thank you.

[The prepared statement of Mr. Mikowicz follows:]

STATEMENT OF
JEROME D. MIKOWICZ
DEPUTY ASSOCIATE DIRECTOR FOR PAY AND LEAVE ADMINISTRATION
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON THE FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

A CALL TO ARMS: A REVIEW OF BENEFITS
FOR DEPLOYED FEDERAL EMPLOYEES

September 16, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

On behalf of our Director, John Berry, I want to thank you for inviting the U.S. Office of Personnel Management (OPM) to appear at this hearing today and for your interest in the benefits the Federal Government provides to its civilian employees who are deployed to Afghanistan, Iraq, and other areas of armed conflict.

All Americans should be deeply grateful for the service of the Federal civilian employees who are deployed to areas of armed conflict, such as Iraq and Afghanistan, where they may be faced with extraordinary challenges to their personal safety as well as to their ability to get the job done. Deployed civilian employees are essential to the Government's mission, and the pay and benefits they receive must reflect the vital services they provide. We at OPM are committed to ensuring the Government has the human resources tools it needs to attract and retain an effective civilian workforce. This commitment includes doing all we can to help ensure that deployed civilians receive fair and accurate compensation and benefits in an efficient and timely manner.

Let me begin by briefly reviewing the principal pay and benefits provisions that apply to Federal civilian employees deployed to combat zones. There are, of course, special authorities that apply specifically to Foreign Service employees or Defense Department employees, and the Departments of State and Defense are in a better position to discuss those. I will conclude by describing how OPM is working with State, Defense, and other agencies to see where we need to do more for our deployed civilian employees.

CONTEXT FOR PAY AND BENEFITS OVERSEAS

Federal civilian employees deployed to work overseas, including in the Iraq and Afghanistan war zones, are entitled to a wide array of pay and benefits, but their pay and benefits may be influenced by three factors.

First, they generally continue to serve under their normal pay system and continue to receive pay and benefits that are granted across-the-board as entitlements or on an individual basis as human resources (HR) flexibilities. Examples of entitlements are annual pay adjustments, advancement in the pay range (e.g., step increases), overtime pay and other premium pay, accrual and use of annual and sick leave, creditable service for retirement system coverage, participation in thrift savings, and health and life insurance. Some of the standard entitlements are enhanced to recognize service overseas. For example, the ceiling on the amount of annual leave that may be carried over from one leave year to another is 360 hours overseas versus 240 hours Stateside. Also, deployment to a war zone is considered "a life event" that allows employees an opportunity to elect different health insurance coverage or enhanced life insurance coverage. The HR flexibilities I referred to that agencies may use include recruitment, retention, and relocation incentives (3Rs) based on staffing needs for particular occupations or grade levels of work, special requirements of the mission, and unusually high or unique skills of individual employees. Quality step increases, performance awards, and cash awards are other examples of HR flexibilities that can be used to reward good performance for those deployed in combat zones, just as they are for other employees.

Second, as in the United States, multiple pay systems exist side-by-side overseas, and employees working side-by-side overseas may be graded and paid under different pay structures, in addition to having somewhat different benefits. These differences are often based on different mission and workforce requirements and are the result of separate laws that have been authorized by Congress over many years. While the primary pay systems under title 5, United States Code, are the General Schedule, Federal Wage System, and Senior Executive Service, many employees overseas are covered by the Foreign Service, the intelligence agencies' pay systems, or agency-specific authorities. I should note that for several years, various Defense Authorization Acts have provided temporary authority to allow agencies not otherwise covered by the Foreign Service Act to pay certain Foreign Service benefits, including a death gratuity, to other Federal civilian employees serving in Iraq and Afghanistan. This has helped considerably to provide a more comprehensive and consistent approach to benefits for Federal civilians in combat zones.

Third, civilian employees working overseas receive additional compensation as authorized by title 5 of the United States Code and the Department of State Standardized Regulations. The Standardized Regulations, established by the Secretary of State, provide a common framework for payment of allowances and differentials to civilian employees overseas. Such payments include danger pay, post hardship differential, quarters allowance, cost-of-living allowances, and payments during evacuations, as applicable. In Iraq and Afghanistan, the hardship differential is equal to 35 percent of an employee's basic pay, and danger pay is also equal to 35 percent of basic pay. Together,

these two payments alone provide for well-deserved additional payments of 70 percent of basic pay to recognize the extraordinary commitment and service of deployed civilians under very dangerous and trying conditions.

EXISTING POLICIES AND RANGE OF BENEFITS

OPM administers certain pay and benefits affecting most civilian employees in Iraq and Afghanistan, as outlined below. The Departments of Defense, Labor, and State administer other special provisions, and OPM believes they are in the best position to describe the unique features of the programs they administer.

As I mentioned earlier, Federal civilian employees generally continue to serve under their normal pay system and continue to receive pay and benefits that may be granted across-the-board as entitlements or on an individual basis as an HR flexibility. I also mentioned certain enhancements that apply overseas and in combat zones, such as higher annual leave ceilings and special health insurance and life insurance elections.

Under temporary law, OPM administers and provides guidance to agencies and employees in combat zones for two special provisions. The first is a waiver for a higher premium pay cap ceiling on the amount of basic pay plus premium pay (overtime pay, Sunday pay, holiday pay, and night differential). In the United States, the premium pay ceiling is the maximum locality adjusted rate for GS-15 (not to exceed level IV of the Executive Schedule). Level IV of the Executive Schedule is \$153,200 in 2009. However, for Federal civilians deployed to Iraq and Afghanistan, the premium pay ceiling is the Vice President's salary, or \$227,300 in 2009. Thus, eligible employees could earn up to \$74,100 more in premium pay in Iraq and Afghanistan than they could in the United States.

The second special provision is the higher aggregate pay limitation, which is a ceiling on the total amount of compensation under title 5 that a civilian employee can be paid during a calendar year. Normally, employees may not receive more for certain title 5 payments, when added to basic pay, than the rate for level I of the Executive Schedule (\$196,700 in 2009). This ceiling is removed for any employee who is granted a waiver of premium pay in Iraq and Afghanistan under temporary legislation.

RECENT INITIATIVES

Recently, OPM has placed a special emphasis on where we can do more for our civilian employees deployed to Iraq, Afghanistan, and other armed conflict areas. In June 2008, OPM issued a memorandum to agency Chief Human Capital Officers describing the existing pay and benefits available to civilian employees working in combat zones and strongly urging Federal agencies to become informed of and take full advantage of these authorities.

OPM also continues to support legislation to enhance the benefits of employees in zones of armed conflict. In September 2008, OPM wrote to the Committees on Armed Services

in the U.S. House of Representatives and the U.S. Senate providing its position on certain provisions of the National Defense Authorization Act for Fiscal Year 2009. OPM supported providing appropriate benefits to employees in combat zones and the extension of existing temporary authorities.

Our most important initiative, however, is our collaborative work with State, DOD, and other agencies on studying where we can provide better and more consistent pay and benefits for employees serving in zones of armed conflict. In 2008 and continuing in 2009, OPM met many times with the Departments of Defense and State and other agencies to share information on the compensation and benefits available to civilian employees deployed to combat zones and other overseas locations with similar conditions, to identify problems, and to discuss possible solutions under a common, Governmentwide approach. This initiative is ongoing.

CONCLUSION

The interagency working group has made considerable progress. We have discussed the common problem areas and are examining the compensation available to deployed civilians to ensure it meets our needs for recruiting and retention. If changes are needed, the Administration will put forth a comprehensive proposal to address the issues identified. We believe the outcome of this process will also help ensure greater consistency in these employees' compensation and benefits to the extent such consistency is desirable and feasible.

In closing, I want to again assure you that OPM continues to work on this issue as a priority, because we believe it is vital to do all that we can to ensure that civilian employees who put their lives on the line for the American people are appropriately rewarded and supported by the Federal Government as their employer.

Thank you again for the opportunity to discuss this important issue with you. I would be happy to respond to any questions you may have.

Mr. CONNOLLY. And finally, Mr. Hallmark.

STATEMENT OF SHELBY HALLMARK

Mr. HALLMARK. Thank you, Mr. Chairman, Ranking Member Bilbray.

Mr. CONNOLLY. Mr. Hallmark, you're going to have to speak into the mic. We can't hear you. Thank you. And if you can speak directly into that mic. I don't mean to suggest my hearing is going, but it would be helpful.

Mr. BILBRAY. So people hundreds of years from now can hear your sweet words.

Mr. CONNOLLY. None of us are getting any younger here.

Mr. HALLMARK. It's my pleasure to appear here today to discuss the Office of Workers' Compensation Programs' role in providing benefits to the brave Federal civilian employees who serve in Iraq, Afghanistan, and other dangerous areas around the world. We deliver services to these employees under the Federal Employees Compensation Act [FECA].

Starting at the top with Secretary Solis, all of us at the Department of Labor are fully committed to ensuring that our deployed Federal colleagues and their families receive the care and compensation they deserve. We know they have undertaken assignments that involve significant hardship, substantial risk, and that their work is critical to the success of American efforts in the Middle East.

OWCP has reached out to the Departments of Defense, State, and other agencies to see that Workers' Comp claims from these deployed civilians are handled promptly and appropriately, and to coordinate on related issues such as pre- and post-deployment counseling. We will continue to work with our sister agencies to make further improvements in the administration of the FECA in this respect, and to assist where we can in the overall delivery of services and benefits to these deserving Americans.

To ensure that claims from deployed employees are handled expertly, we have assigned that work to a special unit located in our Cleveland FECA district office. This unit has received special training and experience in dealing with various types of extraordinary claims, including those resulting from overseas injuries. They've developed ongoing relationships with their counterparts at the major overseas agencies, and they work closely with them.

For example, as a result of a recent specific agreement put in place following an interagency meeting last year, our Cleveland staff now notify the employing agency whenever they find themselves at the point of needing to deny a claim because they haven't received the information they need to pay it. That allows the agency the chance to investigate, determine whether there is more information that they can help to provide, or if perhaps the injury is simply resolved.

Cleveland has also relaxed their normal FECA timeliness standards for receipt of such documentation so that there is adequate opportunity to obtain that medical or other information that may be difficult to track down from an overseas location.

As noted in my written testimony, FECA coverage for deployed individuals, although universal, extends to an extremely wide

range of circumstances beyond the normal workplace nexus. This includes while eating, sleeping, and during travel and a whole range of other circumstances.

In practice, the great majority of claims received from Iraq and Afghanistan are quickly and accurately handled and are approved. Of those that are not approved, the great majority involved injuries for which OWCP simply never receives any followup medical. On more severe cases, OWCP engages closely to address ongoing disability or complicated medical conditions, and assigns occupational nurses to assist such workers in navigating the medical delivery system and in returning to work when medically able to do so.

GAO recently conducted a review of our FECA claims process for civilians injured in war zones. Their report included only two recommendations: One, suggesting that we provide a better explanation of the type of medical evidence required to support a claim for compensation, and another to speed the issuance of our regulations concerning the death gratuity which was enacted in the Defense Authorization Act of fiscal year 2008. That new FECA death gratuity provides \$100,000 in benefits to specified survivors of workers killed while supporting a contingent operation such as Iraq or Afghanistan, and our interim final rule was published with respect to that gratuity on August 19th, this past month, making that benefit fully operative for deployed civilian workers.

With respect to the medical evidence issue, we agree with GAO's recommendation that we review those instructions that accompany our claim forms, and, in fact, we expect to issue a separate instruction form for use by deployed Federal employees within the next few weeks. This fact sheet will address coverage issues as well as the type of medical documentation needed in certain circumstances, and will be distributed through the key employing agencies as well as via the OWCP Web site.

I would like to end by commending the actions reported by my colleagues today at Defense and State and at other agencies with respect to the overall health and safety of their employees. Complex issues such as PTSD need to be addressed in comprehensive ways, and many key services must come not after the fact from Workers' Compensation or medical assistance, but in advance via enlightened preparation and assistance on the part of the employer. In ensuring that workers get, for example, pre- and post-deployment screening and counseling, these agencies are serving their employees while they're maximizing their ability to perform both in the stressful environments and when they return, and they are reducing the likelihood of serious injury and trauma.

Mr. Chairman, I would be glad to answer your questions.

Mr. CONNOLLY. Thank you, Mr. Hallmark.

[The prepared statement of Mr. Hallmark follows:]

**STATEMENT OF SHELBY HALLMARK
ACTING ASSISTANT SECRETARY FOR
EMPLOYMENT STANDARDS
U.S. DEPARTMENT OF LABOR
BEFORE THE SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE
AND THE DISTRICT OF COLUMBIA
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

September 16, 2009

Chairman Lynch, Ranking Member Chaffetz, and Members of the Subcommittee:

My name is Shelby Hallmark, and I am the Acting Assistant Secretary for the Employment Standards Administration of the U.S. Department of Labor, and the Director of the Office of Workers' Compensation Programs.

I appreciate having this opportunity to discuss the Office of Workers' Compensation Programs' (OWCP) role in providing benefits under the Federal Employees' Compensation Act (FECA) to Federal civilian employees serving in Iraq, Afghanistan, and other areas around the world. Please be assured that the Secretary of Labor is fully committed to ensuring our deployed Federal civilian personnel and their families receive the care and compensation they deserve. OWCP has worked with the Department of Defense and other agencies to see that workers' compensation claims received from deployed Federal civilian personnel are handled promptly and appropriately and we look forward to a continuing working relationship to further make improvement in the administration of the FECA in this area. These claims are adjudicated by a special unit located in the Cleveland Division of Federal Employees' Compensation (DFEC) district office to ensure consistent and timely processing and assistance to the injured employee.

The U.S. Government Accountability Office (GAO) recently conducted a review of the DFEC claims process for civilians injured in war zones. The report included only two recommendations; one pertaining to a better explanation of the type of medical evidence required to support a claim for compensation and one regarding establishing a clear timeframe for issuing implementing guidance concerning the death gratuity granted by section 1105 of the National Defense Authorization Act for Fiscal Year 2008, Public Law Number 110-181. We agreed to review the instructions that accompany our injury claim forms, and the death gratuity recommendation was accomplished via our interim final rule published on August 19, 2009.

OWCP/DFEC administers the FECA which provides workers' compensation coverage to 2.7 million Federal and Postal workers around the world for employment-related injuries and occupational diseases. Benefits include wage replacement, payment for all reasonable and necessary medical treatment for work related injury or disease and, where necessary, medical and vocational rehabilitation assistance in returning to work. Survivor benefits are also payable for deaths which occurred in the performance of an employee's federal duties. The program has 12 district offices nationwide.

FECA, as the first comprehensive federal workers' compensation legislation enacted on September 7, 1916, has long provided benefits to all federal employees and their survivors for disability or death due to an employment injury. Providing compensation for wage loss and medical care to civilian federal employees who are injured domestically or overseas, facilitating return to work for employees who have recovered from their injury and providing benefits to survivors remains the central concern in the administration of the FECA.

Benefits under the FECA are payable for both traumatic injuries (injuries sustained during the course of a single work shift) and occupational diseases (medical conditions sustained as a result of injury or exposure occurring over the course of more than one work shift). Benefits are paid from the Employees' Compensation Fund and employing agencies are billed annually for the benefits paid for their employees from the Fund.

The FECA program provides payment for medical care due to injury as well as payment to the injured worker to replace lost wages (paid at two-thirds of the employees' salary if there are no dependents or three-fourths if there is at least one dependent); provides monetary award to injured workers for permanent impairment of limbs and other parts of the body; and provides benefits to survivors in the event of a work related death.

In addition, the National Defense Authorization Act for Fiscal Year 2008 amended the FECA by establishing a FECA death gratuity benefit of up to \$100,000 for eligible beneficiaries of Federal employees or employees of Non-Appropriated Fund Instrumentalities who die from "injuries incurred in connection with service with an Armed Force in a contingency operation," such as those underway in Iraq and Afghanistan. The \$100,000 death gratuity may be subject to offset by other federal death gratuity benefits provided pursuant to other authorities. Interim Final Regulations explaining this benefit were published in the Federal Register on August 18, 2009.

Claims for benefits under the FECA are usually filed by the injured worker through their employing agency and then forwarded to one of the 12 FECA district offices. District office staff are responsible for reviewing the claims and determining entitlement to FECA benefits. The evidence submitted must establish that the claimant is a Federal civilian employee who filed a timely claim for benefits for a medical condition sustained as a result of a work related incident or exposure. If the evidence submitted is not sufficient to establish the claim, DFEC district office claims staff will advise the claimant and employing agency of the deficiencies in the evidence, explain the evidence which is needed to establish the claim and provide additional time for submission of the necessary evidence. Claims staff may communicate directly with the treating physician or may arrange for the claimant to be seen for a second opinion medical examination.

If the claim is denied or the claimant disagrees with the benefit level awarded, the claimant has several rights of review including either an oral hearing or a review of the written record by an OWCP hearing representative in DFEC's Branch of Hearings and

Review or a reconsideration before the DFEC district office. A claimant may submit additional evidence in support of the claim through the hearing and reconsideration process. A claimant also has the option of requesting an appeal to the Employees' Compensation Appeals Board (ECAB), which is the highest appellate authority in FECA. The ECAB's review is based solely upon the case record at the time of the DFEC's formal decision and new evidence is not considered.

FECA Claims from Iraq and Afghanistan

Specific information about individual claims is generally protected from public disclosure by the Privacy Act (5 U.S.C. § 552a). In an effort to respect the privacy of injured claimants and survivors, I will discuss claims in aggregate. We have identified 537 claims filed with DFEC for injuries sustained by Federal civilian employees while working in Iraq since 2004 and Afghanistan since 2007. (To ensure that war zone cases are carefully managed, OWCP established a separate numbering sequence for such claims beginning in those years.) Some of the injuries claimed arose directly out of the armed conflict and others occurred as a result of routine accidents or exposures. Of the 537 claims, 18 death claims have been filed; 16 of those death claims have been accepted as resulting from an employment related incident. One claim was denied as we were unable to establish that the employee who was a foreign national was killed in performance of their Federal civilian duties and in the second claim we were unable to establish that the exposure occurred during the employee's deployment. A total of \$14.9 million dollars has been paid in medical benefits, lost wages and death benefits for all of these workers or their families. Of the claims identified, 142 have been denied because they did not meet the requirements for entitlement under the FECA. Most of these claims were denied either because no medical evidence was submitted or no exposure or incident was identified (93 cases) or because the medical evidence failed to establish a causal connection between the work-related event and the diagnosed medical condition (42 cases). As I noted, claimants have multiple opportunities to submit additional evidence and obtain further administrative review of a claims determination with which they disagree.

FECA currently provides comprehensive workers' compensation coverage for employees in zones where armed conflict may take place. While Federal employees located abroad are not covered around the clock under all situations, deployed employees in travel status or on a special mission are covered under FECA for all activities reasonably incidental to their employment, such as eating, sleeping and during travel. Under the FECA, "disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual, suffered by an employee who is employed outside the continental United States ... is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual." 5 U.S.C. § 8102(b).

A war-risk hazard is defined as a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring within any country in which a covered individual is serving. The hazard may arise from the discharge of a missile; action of a hostile force or person; the discharge or explosion of munitions; the collision of vessels in a convoy or the operation of vessels or aircraft engaged in war activities. Employees who reside in the vicinity of their employment who are not living there solely due to the exigencies of their employment (local hires) are only covered while in the course of their employment.

While Federal employees abroad are not covered around the clock under all situations, FECA (in a manner similar to other workers' compensation systems) recognizes a number of potentially applicable doctrines that extend workers' compensation coverage for Federal employees injured in circumstances not directly related to their job duties.

The zone of special danger doctrine provides coverage of injuries to employees sustained in foreign countries if the obligations or conditions of employment overseas expose them to hazards not common to all travelers.

The proximity rule provides coverage for injuries suffered due to a hazardous condition proximate to the employment premises.

The positional risk doctrine provides coverage for employees where the only connection of the employment with the injury is that employment obligations placed the employee in the particular place at the particular time when he or she was injured by some neutral force, meaning by "neutral" neither personal to the claimant nor distinctly associated with the employment.

The rescuer doctrine provides coverage in an emergency to include any act designed to save life or property in which the employer has an interest.

The bunkhouse rule provides coverage where an employee is injured during the reasonable use of employer provided housing which the employee is required or expected to occupy.

While the FECA specifies the critical elements that a workers' compensation claimant must first prove in order to establish entitlement, we do recognize that civilians injured in the war zones may encounter complications in establishing their workers' compensation claims that employees injured in the States would not encounter. There is limited availability of medical treatment and limited communications. We formally met with management from the Department of Defense to discuss these mutual concerns in May 2008, and again in September 2008. It was agreed that similar concerns existed for all agencies with civilians working in the war zones and we participated in an interagency meeting to discuss these concerns in June 2008. We agreed to relax our time frames for claims adjudication and to give advance notice to the employer prior to denying a

claim. We clarified our procedures and what the employing agencies could do to help ensure prompt resolution of their claims.

OWCP works closely with the employing agencies to ensure that individuals with serious injuries, especially those wounded in combat zones, receive prompt services. Claims arising out of injuries sustained overseas are adjudicated by a special claims unit located in the Cleveland DFEC district office. The claims staff in this special unit work closely with the various employing agencies to obtain the evidence necessary to adjudicate the claim and are familiar with certain logistical difficulties that arise from overseas claims. FECA beneficiaries have the right to choose their own physician and all medical costs associated with the injury are paid in full with no co-payment from the injured worker. Additionally, a registered OWCP field nurse may be assigned to the injured worker to assist in coordinating medical treatment and obtaining necessary authorizations. Once the claimant has recovered from the injury OWCP works with the employing agency or provides vocational rehabilitation to assist in return to work.

Under the FECA program, any medical condition can be accepted as long as the probative medical evidence establishes the condition was caused, accelerated or aggravated by the employment-related incident or exposure. This includes mental disorders, traumatic brain injuries and any other medical condition that may be a consequence of an injury sustained on the battlefield. Most conditions, including psychiatric disorders, traumatic brain injuries, burns, open wounds, hearing loss, amputations also occur in non-combat situations and are routinely accepted if the evidence supports that such conditions arose out of the employees' federal employment.

The injured federal worker is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. In addition to the claimant's initial choice of a treating physician, OWCP authorizes referrals to other specialists so long as the treatment is for an injury-related condition.

As noted previously, GAO recently conducted a review of the DFEC claims process for civilians injured in war zones. The report recommended that we revise application materials for FECA claims to make clear what medical documentation applicants must submit with their claims, which OWCP agreed to do. The CA-1, "Federal Employees' Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation", is the standard form used to initiate a claim for traumatic injury in every instance that a federal civilian employee sustains an injury while in the performance of federal duty. In FY 2008, DFEC received over 105,000 traumatic injury claims. The nature of the injuries claimed varies from very simple, obvious injuries to catastrophic events and complex disease conditions of uncertain origin. The nature of the injury claimed by the federal employee impacts the type and amount of evidence requested by DFEC. For instance, if an employee experiences an obvious injury such as a laceration on work equipment, usually a diagnosis and a physician's signature are sufficient in itself to accept the claim. However, when a claim that a traumatic event caused a serious medical condition such as myocardial infarction is received, much more detailed evidence is required to include the physician's analysis of the pre-existing medical history and other possible causative factors. The wide array of injuries that are claimed will limit the precision of directions we can provide as to the documentation needed to establish a claim. We do not want to routinely require detailed narrative medical reports in every instance when it may be unnecessary to incur this burden and expense to approve the claim.

Our program is structured to serve the vast majority of our claims that are generated by civilians serving in the continental US and outside the war zones. Our district offices provide employing agencies' compensation specialists with training to assist injured workers in obtaining appropriate information to establish their claims. We provide informational brochures and on-line procedures to aid claimants through the claims adjudication process. Our district offices maintain phone banks to respond to general questions and our Branch of Technical Assistance provides guidance and training to employers, unions and individual claimants.

We recognize that many of these services may not be available to federal civilians who are injured in war zones. Therefore, we agreed to review the instructions that accompany the CA-1 form to determine whether further guidance can be included with respect to the medical information that should be submitted to establish the claim.

OWCP is sensitive to the hardships endured by Federal employees in war zones, and seeks to ensure that the best possible service is provided to these individuals. We continue to work closely with our colleagues in the Department of Defense and other agencies to coordinate services to injured Federal workers. Understanding the difficulties inherent in obtaining medical evidence, we have established guidelines within the special claims unit to assist the injured employee in establishing their claim by using the Office's district medical advisors, by notifying the employing agency of any deficiencies in the medical evidence prior to denying a claim, by providing guidance regarding suitable medical reports to the employing agencies so that their own physicians can opine on the causal connection between war zone conditions and a diagnosed medical condition. In significant injury cases, we have assigned a contract nurse to assist in coordinating medical care when multiple medical specialists are involved in the case. We have authorized and reimbursed the cost of travel when the injured Federal employee chooses to be cared for through the military treatment facilities once they return to the US.

The FECA is administered for deployed civilian employees by OWCP staff who are dedicated to promptly adjudicating claims, promptly paying medical bills and claims for compensation, and providing assistance in returning the injured worker to gainful employment once that is medically possible. In the great majority of in-theater cases filed, these goals have been fulfilled efficiently and effectively. We will, of course, continue to strive to perfect the administration of the FECA for all claims.

Mr. Chairman, I would be pleased to answer any questions that you or the other members of the Committee may have.

Mr. CONNOLLY. And that buzzing you're hearing is a call for votes. I am going to start, and then we will—if Mr. Bilbray wants to go, he can, or we will recess and reconvene after the series of votes. And thank you all very much for your testimony.

By the way, before we begin my 5 minutes, I know that if Chairman Lynch were here, he would want to announce that a wonderful bill has been introduced by myself and my colleague, my friend from California, Mr. Bilbray, H.R. 3264, the Federal Internship Improvement Act, and that this subcommittee would want to hold hearings on that act. And I know were he here, he would join Mr. Bilbray and me in committing to that and urging our staff to prepare for those hearings.

Mr. BILBRAY. And this was an unpaid advertisement.

Mr. CONNOLLY. That will teach him for putting me in the chair.

OK. Let me ask first, Mr. Mikowicz, a little earlier an interagency working group was put together for Federal employees, civilian employees deployed overseas in combat areas. OPM at that time declined to chair that interagency working group. Why is that? And is that decision now up for reconsideration?

And, Ms. Farrell, welcome your comments as well if you have any.

Mr. Mikowicz.

Mr. MIKOWICZ. Thank you.

From the way I would characterize it is that we've had a very collaborative approach all along. One thing that you always have to consider is what's going to be your vehicle for introducing legislation. DOD Authorization Act certainly has been the vehicle for the premium pay cap and the waiver and for other provisions that are in there. The Foreign Service Act sometimes is another vehicle.

DOD, obviously having the most employees that are directly affected in any single agency across government, took the lead, and we attended all the meetings. We were working along with them. The GAO report did come out, did recommend that we form an executive group or that we submit a legislative proposal.

We have continued to work with the agencies. All of our meetings have not been at Department of Defense. Some have been at State. And we are all working for the same end product. So I think, from OPM's point of view, we will be looking at interest governmentwide, just as DOD and State are, but we will have a special role.

Mr. CONNOLLY. But given that fact, Mr. Mikowicz, doesn't it make sense for you to chair it?

Mr. MIKOWICZ. I am sorry?

Mr. CONNOLLY. Given that fact that you're looking at it agencywide—Federal agencywide, does it make sense OPM chair that interagency working group?

Mr. MIKOWICZ. I would say OPM needs to have a leadership role, and we will do that. We will vet proposals with the agencies. Some of our proposals might be guidance, but if there's a legislative proposal—obviously we work with OMB, and all agencies get a chance.

Mr. CONNOLLY. Thank you.

Ms. Farrell.

Ms. FARRELL. Thank you, Mr. Connolly.

Our report had 10 recommendations, and the first recommendation was directed at OPM to lead such a comprehensive review as requested last year by the Oversight and Investigation Subcommittee of the House Armed Services Committee to determine if legislative changes were needed. And we don't want to not give credit to OPM and especially with DOD for the meetings that they have had to try to organize such a review, but we do think it's time for OPM to step up and have the leadership role.

As you may know, strategic human capital management has been on GAO's high-risk list since 2001, and it has remained on that list. Our most recent list was January 2009, where we noted that leadership was needed in this area of human capital reform to make sure that there was a level playing field. And there is much concern about the number of pay systems that we are talking about today that often result in differences, and the amount of pay or what pay one receives, and this is a responsibility of OPM where they could step up and show the leadership role.

Mr. CONNOLLY. Thank you.

Ms. Fitzgerald.

Ms. FITZGERALD. Yes. I would like to add to this. I think the spirit of that recommendation is now in full play, because OPM, Department of State, and the Department of Defense are coming together, and including OMB actually, jointly. It is almost a triumvirate of leadership. So I think your concerns about having OPM in the lead have been addressed through this interagency working group. They're working as full partners, full leaders in this, and issues such as the disparities in pay systems are being addressed through the proposals that we'll be sending through Congress.

Mr. CONNOLLY. Thank you.

Let me ask again, Mr. Mikowicz and Ms. Farrell—and we're probably going to have to break after this. Increasingly, we are using term-limited employees, Notice 3161 employees. One of the concerns I would have and I think the subcommittee would have is, with the best of intentions, what happens to those folks should they suffer a medical condition in the service of their country and/or should PTSD, posttraumatic stress syndrome, occur or make itself manifest long after the 5-year term is over? We know that if you were in the military, we'd deal with that. But if you're a limited-term employee of 3161, presumably we would not unless there's special provisions for that. So I wonder if you would comment on that.

Mr. MIKOWICZ. Well, I can say that's one of the issues we're looking at. GAO did start with pre- and post-deployment assessments, but obviously there's traumatic injury and other benefits, and those are on the table for discussions. We just haven't reached an administration position yet, but we are concerned.

Ms. FARRELL. Again, this is one of our recommendations. Much is to be learned from DOD in this area of how they have tracked their military personnel and conducted the pre- and post- and now the reassessments after deployment. It is a lessons learned, I think, from DOD of what should be with the civilians, because, as we noted in our statement, many of the civilians do not have assessments after deployment, and, as you mentioned, posttraumatic stress disorder often shows up 6 months after they return.

Mr. CONNOLLY. We are going to have to vote, and we have five votes. The first one is a 15-minute vote. That's the one right now. And then there are four 5-minute votes, presuming that's it, and hopefully that's it for the day in terms of votes. So bear with us. It is going to be about maybe sometime—quarter after, roughly, if you can hang in there with us, because I think there's a lot more we'd like to get to and talk about. Forgive the interruption, but as I said, it's the nature of the beast here. I appreciate your indulgence.

Obviously, one of the things we are going to want to talk about is the unevenness of how we are treating men and women who serve overseas, and what services are allowed and what services are made available by sufferance, and what, if any, changes we ought to make to try to move toward a uniform policy and make sure that quality services are available to our men and women who serve overseas. I also want to get back to the problem of time lags on claims and complaints.

Mr. HALLMARK. Before you go, though, I just might note that if—the 3161 employees you were just referring to are, I believe, Federal employees, so they have FECA coverage regardless of the limitation of their appointment. And that coverage would continue in perpetuity for the latent diseases such as PTSD.

Mr. CONNOLLY. OK. We will come back. This hearing is in recess until our votes are over and we recall the hearing. Thank you.

[Recess.]

Mr. CONNOLLY. The hearing is reconvened. I hope you had a chance in the brief interval to address the subject at hand. Rhode Island is neither a road nor an island. Welcome back. Forgive us for the length of voting on the floor of the House of Representatives, but it is always a little unpredictable. So, anyway, welcome back.

We were discussing 3161 term employees, and I wonder, Ms. Farrell, if you might comment from GAO's perspective on the deployment of term employees and the issue, I think Mr. Hallmark had indicated, that they had health care benefits in the event of PTSD showing up, for example, years later. I thought the words you used were in perpetuity; is that correct?

Ms. FARRELL. That is our understanding as well. What has been conveyed is correct about those temporary employees.

Mr. CONNOLLY. Combat-related or environment-related. Obviously they don't have health care benefits in perpetuity.

Ms. FARRELL. Correct.

Mr. CONNOLLY. Could you expand?

Ms. FARRELL. Let's take DOD's memo regarding non-DOD employees who have compelling reasons for care would be eligible for that at military treatment facilities. So they would fall into that temporary, whether they served for less than 180 days or more than 180 days. Despite the classification, they would be eligible for certain care.

Mr. CONNOLLY. Eligible, but let me turn to Ms. Fitzgerald then in response to your response. It was my understanding that is still up to DOD whether somebody who is not a DOD employee would actually have the benefits of a DOD facility and that is being determined on a case-by-case basis at the moment; is that correct?

Ms. FITZGERALD. That is correct. So in the case I think where we are, for those who are under the 3161 authority who are not DOD employees, and even those who are DOD employees, fall under the worker's compensation program. And so for life they have access to medical care, free of charge, if you will, if it has been determined to be covered by this, at their own private medical care facilities. If they are DOD, 3161s, there is an added benefit that they do and they can since they were a former DOD employees have access to our military treatment facilities.

Mr. CONNOLLY. So let me get this straight. If I am a Department of Agriculture employee, I am sorry, if the Department of Agriculture hires me as a 3161 term limited employee, I am limited for a 5-year term; is that correct?

Ms. FITZGERALD. Correct.

Mr. CONNOLLY. OK. I am deployed to Afghanistan to help in the poppy eradication program and the crop substitution program, and I am unwittingly witness to, and involved in, hostile fire, some kind of traumatic incident. I am not hurt. I get on with my business. As a matter of fact, I resume my duties in Afghanistan, and when my term is up I feel fine. I come home. Ten years later, out of the clear blue, I am shopping at the mall, and all of the sudden I hear a loud noise and I am back in Afghanistan, and all of the sudden I am not the person my wife thinks I am, and neither am I, and clearly I need some help.

Am I eligible still for Federal medical care and where do I go as a non-former DOD employee who was hired by DOA, not DOD? Anybody?

Mr. HALLMARK. Well, if I can interrupt—

Mr. CONNOLLY. You are not interrupting; you are answering.

Ms. FITZGERALD. Do you want to take the answer?

Mr. HALLMARK. Sure. The individual in the example you give would have the opportunity to file a claim under FECA if they learn of the connection between this condition that has evolved 10 years later and their employment and they file the claim within I believe it is 3 years of the time they knew or should have known of that connection. So there is plenty of space for that person to be able to come forward and file a claim. It would then be adjudicated by OWCP to determine whether, in fact, there was a causal relationship between that medical condition and the events that occurred in Afghanistan. And if there was, then that, as Ms. Fitzgerald indicated, then benefits for that condition would be paid 100 percent by the Department of Labor.

The issue that would arise, and that probably is of concern to the folks at the table, is making sure that people know that they have that capability, because if they are a temporary employee and they have gone off to work somewhere entirely different—they are no longer within the Federal civilian structure—there would be a need to make sure that people, as they are exiting out of that position, have knowledge about what they are eligible for in the future.

Mr. CONNOLLY. Mr. Hallmark, if I could stick with the example I had and your response to it, under the example we are both talking about, but I would be sent—you may or may not approve the claim I submit, but it would be a claim to a private provider.

Mr. HALLMARK. It would be a claim to the Federal Government, and the individual's medical treatment would be through a physician of their choice.

Mr. CONNOLLY. Yeah, but—

Mr. HALLMARK. It would not be military.

Mr. CONNOLLY. But my physician is not an expert in post-traumatic stress syndrome. That expertise, by and large, resides in the military side of medicine in this country, not the civilian side of medicine. Most hospitals in America don't have in-depth experience with combat-related PTSD. So why would you limit me to my private physician or a series of private physicians who have no expertise in my problem, which was acquired because of my experience in a military combat environment, a civilian employee nonetheless?

Mr. HALLMARK. The Labor Department doesn't limit the civilian's ability. We simply will pay for the physician that you choose.

Mr. CONNOLLY. I choose to get the best expertise in the world, which happens to be in a military health care facility.

Ms. FITZGERALD. Then, sir, this policy—

Mr. CONNOLLY. You need to speak up, Ms. Fitzgerald.

Ms. FITZGERALD. Then the policy that Ms. Farrell talks about would apply. Then the individual would have to come to DOD and request a special permission to use the military treatment facility for their continued care.

Mr. CONNOLLY. But there is no policy going forward that would guarantee 10 or 15 years hence, and we still have Vietnam veterans 30 years later suffering PTSD. So right now the policy is on a case-by-case basis, and frankly, it is at your sufferance; it is not my right. It is at your sufferance.

Ms. FITZGERALD. That is correct.

Mr. CONNOLLY. You are being generous under those rules in saying yes to most cases who apply, but there is no guarantee 20 or 30 years hence you will continue that policy.

Ms. FITZGERALD. That is correct.

Mr. CONNOLLY. Whereas, if I were in the military and had the same symptoms at the same time—in fact, everything I described applied to me wearing a uniform or having worn it, then by entitlement I would have access to military care and the expertise of post-traumatic stress syndrome intervention.

Ms. FITZGERALD. That is true. But the Department has always, as long as we can trace this back, has always provided for the exception for individuals to come into the military treatment facility if they needed care.

Then there are a couple of things that are happening that might be helpful, too. They are not perhaps adequate substitutes, but we are setting up the centers for traumatic brain injury, and one of those centers is a repository of where physicians and employees can go to get the latest information on care and so on. So that may be helpful as a resource center, and certainly the Department has and continues to make available its knowledge and transports knowledge across the civilian community in these cases.

And then—for now, that is what the policy is, that they would come to the Department of Defense and seek special permission to come into a military treatment facility. I have not been aware of any that we have denied.

Mr. CONNOLLY. Professor Browning, we have talked about a lot of subjects. Anything you wanted to comment on in terms of the range of questions, albeit with an interruption?

Mr. BROWNING. I just admit that I have only been on the job less than 2 months, so I am not an expert by any means in the full scope of what we as a department do. I have, in preparations for this testimony, have been educating myself on it, and I am learning the difficulties that are out there in tracking former employees.

When an employee at the State Department retires, we give them a copy of their medical records if they ask for it. They sign the papers, they go away, and we don't hear from them again. We don't track them, we don't keep in touch with them, and they have no benefits accrued to them that we would have to offer them for their continued service.

It is an excellent point that the expertise in dealing with PTSD is centered around veterans hospitals in Washington, DC, and quite frankly, the number of cases we have seen are so small—I think the total is six for the universe of our population—that we right now haven't set up a program to address it beyond our tracking the employees.

Ms. FITZGERALD. In terms of what the Department is doing to track our 3161s who have left us, we know that this has been a problem, those who leave us after short periods of service, how do we stay connected with them, and we do feel the obligation to do that, take that very seriously. When we stood up a new civilian readiness unit, we have built in the capability there to track those folks. So now all these post-deployment physicals, we have a place to track those who take part in these assessments. So we know who they are, and then we are taking on an outreach effort so that we stay in touch with them through their period of departure, even if we do it annually through a note that says, hi, we are still worried about you, we care about you, any services that you need, please feel free to contact us, to be very deliberate about it. But we had to install a separate organizational capability to do that.

It still remains a challenge once they leave here.

Mr. CONNOLLY. Ms. Fitzgerald, let me ask you a question then, and I think in some ways it does come back, Mr. Mikowicz, to, frankly, OPM's abrogation of leadership in not chairing the Inter-agency group. But we have found that some Federal agencies were unaware of the fact that their employees could avail themselves of DOD services when they come back with service-related medical problems, including injuries, which is a little stunning given the fact that they served, too, and why wouldn't they have available to them the same services as anybody else.

So what proactively is DOD doing or planning to do to make sure that all Federal agencies are aware of the availability on an equal basis?

Ms. FITZGERALD. We did three things. When the report first came out about making the communication more widespread and known and the benefit more known among our communities, we sent out a communication to our Federal agencies, and we did a briefing. We brought our Federal agencies in, and we provided a briefing to them about the benefits that are available. That was the first thing we did.

The second thing we did, we institutionalized that communication effort and put it on our Web site so they could have access to it.

And the third thing that we are doing is we have developed, or I am developing, ready to launch by the end of the month—the end of October, I am sorry, it is a short PowerPoint presentation that takes someone through the process sort of in a way that speaks to them in more easily understood terms than perhaps the policy would. So that this PowerPoint presentation could be used in any forum where our Federal agencies are orientating, giving a pre-deployment orientation to their folks.

We think the combination of those three efforts may be helpful in showing that this knowledge is institutionalized in all of our Federal agencies. We will be ready to roll out that training module, as I said, sometime in October.

Mr. CONNOLLY. I am sure that will be helpful because I am sure you are aware of the fact that the two individuals to your left actually represent agencies that were not aware of that fact. State Department and Department of Agriculture were not aware of the fact apparently, based on our information, that DOD offered this service and it was available to their employees when they came back. So I mean we have work to do.

Ms. FARRELL, from GAO's point of view, I think—I ask you, is this not a weakness in the system: lack of communication, lack of uniformity, different policies, different benefits, sort of a hodgepodge and even problems tracking how many of our employees, or as Mr. Mikowicz indicated, former employees, have in fact served and may or may not over some period of time needed to be tracked because, even if they don't need it today, they may in the future need medical help and services that is a future claim on the Federal Government?

Your comment.

Ms. FARRELL. I think you have hit upon several of the issues that our report brings to light, especially that of identification and tracking. You probably noticed, and our report will note, according to DOD and State Department officials, over 10,000 employees have been deployed since 2001, and DOD has a more current number now, stating somewhere in the neighborhood of 41,000. This has been a challenge that DOD has been working on since 1995, and they have made some progress in trying to get a handle on it, but we still need to know about the other agencies, and you are exactly right. You need to identify them, track their movements. Issues can develop years after the deployment, and in order to have that communication, you have to be able to identify them and know where they are.

Mr. CONNOLLY. Thank you. And Mr. Mikowicz, I think—I hope that is a message to be brought back to OPM leadership because if OPM isn't going to take the lead in trying to create some sense of equity and uniformity across the board for our civilian work force serving in dangerous environments, who is? It can't be DOD. They have their hands full with their own challenges. I just think it has to be somebody like OPM, and that is why I would hope that with the new administration, new leadership, the issue of chairing that interagency group would be revisited and swiftly.

Mr. MIKOWICZ. We will certainly take this information back.

Mr. CONNOLLY. And because we have time and we have one more panel, I have one more question, and that has to do, Mr. Hallmark, among the GAO findings was one that is pretty stunning. Approximately 80 percent of deployed civilians who filed a claim with the Office of Workmen's Compensation reported experiencing problems. By the way, much higher satisfaction among those filing claims with DOD, nowhere near 80 percent. What kinds of changes do you think are going to be necessary to try to bring that number down to something more satisfactory?

Mr. HALLMARK. I am not aware of the 80 percent satisfaction finding, but we are working, as I said in my comments, every day to try to improve the performance. FECA process is a joint interactive process that involves OWCP at Labor and the employing agency, and that is true wherever the injury occurs. I know it is something that we need to work together increasingly well to make the outcomes appropriate.

As I said, one of the things that we have done is set up processes whereby we communicate out of our Cleveland office with the employing agencies where a claim has reached the point where we don't believe we can accept it so that we give the agency a chance to help us come to the right outcome. I think that is working. That may result in some cases the case taking a little longer than it would in the normal course, but we think that is the right outcome in that circumstance to make sure we get to the right answer.

Mr. CONNOLLY. Ms. Farrell, can you confirm for me, Mr. Hallmark indicated he was not aware of that 80 percent. That is a finding of the GAO study, is it not?

Ms. FARRELL. Yes. You are referring to the 125 of the 188 claims that took significantly longer than the goal of 45 days, in some cases 20 percent longer than that. So, again, it dates back to the person filing the claim not having a clear understanding of what documentation is required so that when they do submit it, it is facilitated, and those particular claims that we broke down also were related to TBIs, which someone has a TBI it is very difficult I think for them to put the package—

Mr. CONNOLLY. Do you know what the comparable statistic would be for DOD?

Ms. FARRELL. No, I do not.

Mr. CONNOLLY. But not 80 percent?

Ms. FARRELL. Not 80 percent.

Mr. CONNOLLY. Ms. Fitzgerald.

Ms. FITZGERALD. I don't know what the satisfaction rate is with the services at DOL. I can tell you that we have had by our statistics, in 2008 there was about a 50 percent increase in the swiftness in which the documentation was processed and received at DOL, and part of that goes to what Mr. Hallmark talked about. Some things have changed since the day the report was done by the GAO to fix the problems that were found at that time.

Obtaining the appropriate evidentiary documentation is very difficult in a war zone and early on we learned that. These folks would come back and the physicians who even attended to them in the beginning were no longer even a part of the Federal Government. And so it was hard to go back and try and accumulate the

documentation that was needed. So today there are systems in place to try and help gather that documentation, and with the intervention of the Federal agencies by allowing a little time for us to intervene before they deny a claim, allowing us to get in, help assemble that documentation, we have been able to help improve the processing and I think the outcomes for the individuals.

Mr. CONNOLLY. Thank you. And let me just say to all of you and to Mr. Hallmark in particular, you know, this is the Oversight and Government Reform Committee. We are at war. We are running two wars right now, and irrespective of how one may feel about that, the men and women who serve, whether they are in uniform or they are civilian Federal employees, are brave men and women who have answered the call of their country.

In theory, you could have two people in a vehicle who are hit by an RPG or they hit an IED, one is in uniform and one is a civilian employee of Federal agency X. Both of them lose their left arm. Both of them are treated in field combat medical facilities with expert care. But one of them comes home to a military medical system, and the other does not necessarily. And over time, we have two different approaches to two different individuals who served the same purpose and were involved in the same accident with the same injuries.

And there are issues of equity that flow from that, and fairness, and we want to make sure that at the very least there isn't a delay and that if we need to facilitate their having the evidentiary documentation they need, then let's help them, but 80 percent doesn't cut the muster.

Final point, Ms. Fitzgerald, we get complaints from a lot of civilians who do have access to military medical care in these circumstances who, because of a bureaucratic snafu, however, cannot get the necessary credentialing to, in fact, have access to the base.

Now, when I was chairman of Fairfax County, I had my own stickers on my car by virtue of that capacity for Fort Belvoir, and I wasn't seeking medical care daily or weekly. We need to facilitate these brave men and women's access to the base without bureaucratic hassle. And security is one thing; these people have been through hell and back. We need to help them.

So I am going to count on you to please take that back to DOD. We don't want to be hearing about those kinds of problems. They have enough to manage without that.

Ms. FITZGERALD. Absolutely. I think you will be happy to hear that we are going to be modifying the credentialing card that we give so that the back of it—they can have swipe access to the bases and so on. So hopefully we fix that problem.

Mr. CONNOLLY. I thank you all so much. Thank you for your forbearance in the schedule of the House of Representatives, and thanks for serving your country. We may be submitting some additional questions for the record and would appreciate your getting back to us. Thank you all very much.

Our second panel—and I am going to read this while you are shuffling seats. We have two members on our second panel, Dr. Jonathan Shay, who is a clinical psychiatrist who recently retired from the Department of Veterans Affairs outpatient clinic in Boston, MA, my hometown, where he garnered eminent expertise in

the treatment of combat trauma suffered by Vietnam veterans. In 2004 to 2005 he served as Chair of Ethics, Leadership and Personnel Policy in the Office of the U.S. Army Deputy Chief of Staff of Personnel. Dr. Shay is also the renowned author of "Achilles in Vietnam: Combat Trauma and the Undoing of Character" and has written more recently a book, "Odysseus in America: Combat Trauma and the Trials of Homecoming," and he promotes the adoption of policies to minimize future psychological trauma.

Also serving on this panel is Ms. Susan Johnson. Ms. Johnson is the current president of the American Foreign Service Association and has served in Iraq as senior adviser to the Ministry of Foreign Affairs and in the Office of the High Representative in Bosnia and Herzegovina as Deputy High Representative and Supervisor of Brcko District, and she recently served as senior coordinator in the front office of the Bureau of Democracy, Human Rights and Labor.

Welcome both and if you would rise to be sworn in.

[Witnesses sworn.]

Mr. CONNOLLY. I thank you. Let the record show both witnesses indicated in the affirmative.

We have your prepared testimony, and I would ask that you summarize in the space of 5 minutes the basis of that testimony. Dr. Shay.

STATEMENTS OF JONATHAN SHAY, M.D., PH.D.; AND SUSAN R. JOHNSON, PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

STATEMENT OF JONATHAN SHAY

Dr. SHAY. Thank you, Mr. Chairman. I see that the ranking member is no longer here, so—I am, as you so kindly pointed out, someone who learned his chops from combat veterans as a psychiatrist in the VA. Veterans have been wonderful teachers. You were kind enough to mention my two books, and as much of an obsessed author as I am, I don't have to mention them again.

The veterans have made me their missionary to the military forces on prevention of psychological and moral injury in military service, and it has been an amazing trip for me. In the course of it—and you mentioned that I have worked for General Jim Jones, now the President's National Security Adviser; for the Army G-1, the Lieutenant General Hagenbeck; and, most recently, an interesting gig at the Army War College.

I am not a universal expert. I believe that what I have learned about soldiers and veterans probably has applicability to other populations, other folks who are going into harm's way.

My riff to the military people as to how to protect their people is threefold: to provide for stable face-to-face community when going into danger. Train them together, send them into danger together, and bring them home together. It is not rocket science.

The second is expert, ethical, and properly supported leadership.

The third is prolonged cumulative training for actually what they have to do in trade.

So my mantra is over and over: cohesion, leadership, training; cohesion, leadership, training, as the keys to preventing psychological and moral injury.

Now, this is an easy sell to military folks because they are also combat strength multipliers. I do not know the world of the diplomat or the agricultural specialist or the person from the FBI assigned to some investigative duties in Iraq. People would have to make these translations for themselves, and in my written testimony I tried to use my imagination as to how non-DOD agencies might hear my words to the military for their own purposes.

I apologize for any way these recommendations might be off base. It comes out of my ignorance. I am not a universal expert, but I do feel quite confident that some of the things that I say are of merit, and that is to always as far as possible to be thinking in terms of teams, that you are not deploying people to a war zone one by one by one by one, but as work communities.

In the matter of leadership and policy or leadership policy, if you wish, I want to emphasize something that is probably counterintuitive, and that is that there needs to be policy on sleep. Sleep crops up again and again as a cause of psychological injury and something that keeps it going once it is established.

Finally, on training, I would hope that our Federal agencies are making use of hostile environment training. I know that journalists sometimes get it. The BBC trains all their war correspondents. They give them hostile environment training, and that the teams, to the extent that they are deployed as teams, must cross train so they know each other's jobs. That is a very positive thing.

Now, this is really good for the agencies to do this, not out of pure humanitarian impulse or a sense of responsibility, but it is good for you because terrible things happen when your employees acquire bad psychological injuries. And the worst of these are operational paralysis, desertion. People check out psychologically or physically, and unfortunately, there is always the potential for recruitment to extremist causes, people who carry these injuries.

And I am not running the riff that somehow it is the political right that has a unique attraction. The sorry history of Weimar, Germany indicates that both the political right and the political left and the anarchists and the criminals are equally capable of recruiting people who are vulnerable to it because of their psychological injuries.

[The prepared statement of Dr. Shay follows:]

WITNESS WRITTEN TESTIMONY OF JONATHAN SHAY, MD, PhD FOR SUBCOMMITTEE ON
FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
2154 RHOB, 16 SEPTEMBER 2009

I. Who I am

- A. Twenty years VA psychiatrist with psychologically injured combat veterans
- B. Rather famous from *Achilles in Vietnam: Combat Trauma and the Undoing of Character* and *Odysseus in America: Combat Trauma and the Trials of Homecoming* (w/ Foreword by McCain and Cleland), e.g., MacArthur Fellowship
- C. PREVENTION of psychological and moral injury in military service, mainly working through policy, practice, and culture
- D. Military gigs: CMC Jones *TRUST STUDY* 1999-2000, Chair of...for Army G-1, 2004-2005, Bradley Chair @ AWC, 2009

II. I am not a universal expert, but believe the military principles are broadly applicable

III. Three keys to prevention of psychological and moral injury in military service—my riff with military audiences:

- A. Cohesion—train people together, send them into danger together, bring them home together: ho substitute for concrete familiarity, no horror worse than being sent to war with strangers
 - 1. APPLICATION TO NON-DOD AGENCIES:
 - a) *NEVER STAFF YOUR OPERATIONS ONE BY ONE BY ONE BY ONE, ONLY DEPLOY TEAMS, ROTATE AS TEAMS, DO ATTRITION REPLACEMENT BY TEAMS, NOT INDIVIDUALS*
- B. Leadership—EXPERT, ETHICAL, AND PROPERLY-SUPPORTED LEADERSHIP
 - 1. APPLICATION TO NON-DOD AGENCIES:
 - a) *SLEEP PLANNING*
 - (1) TO REQUIRE TELECONFERENCES W/CONUS TO BE HELD ACCORDING TO SLEEP CYCLE OF THE *DEPLOYED* LEADERS
 - (2) POLICY DIMENSIONS RE “SIZING CONSTRUCTS” TO ALLOW FOR ADEQUATE SLEEP
 - b) *TEAMS SIZED TO ALLOW FOR ATTRITION*
 - c) *OVERALL NUMBER OF TRAINED TEAMS BASED ON ATTRITION REPLACEMENT BEING DONE ON A TEAM BASIS, RATHER THAN INDIVIDUAL BASIS*
- C. Training—PROLONGED CUMULATIVE AND HIGHLY REALISTIC TRAINING FOR WHAT PEOPLE HAVE TO DO AND FACE
 - 1. APPLICATION TO NON-DOD AGENCIES:

WITNESS WRITTEN TESTIMONY OF JONATHAN SHAY, MD, PhD FOR SUBCOMMITTEE ON
FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
2154 RHOB, 16 SEPTEMBER 2009

*a) MUST OFFER HOSTILE ENVIROMENT TRAINING [H.E.T.], CF. BBC
TRAINING FOR ITS WAR CORRESPONDENTS, DOD H.E.T. FOR EMBEDS?*

b) MUST CROSS-TRAIN WITHIN TEAMS

D. Interactions—

1. COHESION X TRAINING FOR TEAMS
2. LEADERSHIP X TRAINING: I.E., TOGETHER W/ DIRECT LEADERS [“VERTICAL COHESION”]
3. LEADERSHIP X COHESION

E. THESE ARE ALL VERY SENSITIVE TO POLICY

IV. Outside the VA and Vet Centers, the practical expertise in dealing with psychological and moral injury from war is both sparse and unevenly distributed in private and non-federal public health settings

V. WHY IS THIS OPERATIONALLY IMPORTANT NOW FOR NON-DOD AGENCY LEADERSHIP, NOT JUST A MATTER OF GENERAL BENEVOLENCE AND HUMANE RESPONSIBILITY FOR ONE’S EMPLOYEES?

A. OPERATIONAL PARALYSIS

B. PHYSICAL, PSYCHOLOGICAL, AND SOCIAL DESERTION—ATTRITION AND DEMOTIVATION

C. REVENGE, SABOTAGE, AND WORKPLACE VIOLENCE

D. VULNERABILITY TO RECRUITMENT BY EXTREMIST GROUPS OF ALL STRIPES: RIGHT, LEFT, ANARCHIST, NIHILIST, RELIGIOUS, CRIMINAL, LITERALLY TREASONOUS

1. MORE TO WORRY: ARMED CONTRACTORS, REPATRIATED FROM THEATER, BUT APPLIES TO ANYONE COMING BACK FROM WAR WITHOUT SOCIAL SUPPORT AND CONNECTION—THE SORRY EXAMPLE OF THE *FREIKORPS* IN WEIMAR GERMANY

WITNESS WRITTEN TESTIMONY OF JONATHAN SHAY, MD, PhD FOR SUBCOMMITTEE ON
 FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA
 2154 RHOB, 16 SEPTEMBER 2009

VI. GENERAL PROFESSIONAL CREDENTIALS, SUCH AS MD, PHD, MSW, ETC., DO NOT CONFER AUTOMATIC CLINICAL COMPETENCE TO BENEFIT RETURNEES FROM WAR! OFTEN PEER-BASED SUPPORT AND EDUCATION IS MORE EFFECTIVE, PROVIDED THAT PEER-SUPPORT WORKERS ARE PROVIDED WITH ADEQUATE TRAINING, SUPERVISION, SUPPORT, AND REFERRAL PATHWAYS TO CREDENTIALLED MENTAL HEALTH PROFESSIONALS AND HEALTHCARE FACILITIES! [Cf. the example of the peer-based program in the UK Royal Marines]

VII. OPTIONS FOR CONGRESS:

- A. TO REQUIRE OPM TO DEVELOP MODEL POLICY GUIDELINES FOR ALL FEDERAL AGENCIES DEPLOYING CIVILIAN EMPLOYEES TO WARZONES
- B. TO AUTHORIZE FEDERAL AGENCIES TO EXPEND APPROPRIATED FUNDS FOR SUPPORT OF PEER-BASED SUPPORT PROGRAMS WITHIN EXISTING VOLUNTARY ASSOCIATIONS, SUCH AS THE AMERICAN FOREIGN SERVICE ASSOCIATION AND SIMILAR PARALLELS TO MILITARY UNIT ASSOCIATIONS EMPHASIZING SHARED EXPERIENCE AND ESPRIT D'CORPS
- C. TO REQUIRE THAT ALL FEDERAL EMPLOYEE HEALTH INSURANCE PLANS PROVIDE FOR ADEQUATE MENTAL HEALTH SUPPORT TO PLAN MEMBERS DEPLOYED TO WARZONES, AND TO PROVIDE FOR SOME MECHANISM FOR "TAIL" COVERAGE FOR SEPARATED EMPLOYEES
- D. TO REQUIRE THAT OPM'S OWCP EXPLICITLY RECOGNIZE PSYCHOLOGICAL INJURIES AS A CATEGORY OF COMPENSABLE FEDERAL EMPLOYMENT-RELATED INJURIES [ALSO EXTENDING THIS BY STATUTE TO CLARIFY WORKERS' COMPENSATION COVERAGE OBLIGATIONS FOR FEDERAL CONTRACTORS!?]
- E. EXTEND VA HEALTHCARE, INCLUDING MENTAL HEALTH CARE ELIGIBILITY TO FEDERAL WORKERS WHO HAVE SERVED IN WARZONES
- F. REQUIRE A GAO STUDY OF THE CHARACTERISTICS AND DISTRIBUTION OF THE CIVILIAN SKILL BASE [INCLUDING PEER-BASED PROGRAMS] OUTSIDE OF THE VA AND VET CENTERS FOR SUPPORTING THOSE WITH PSYCHOLOGICAL AND MORAL INJURIES FROM WAR.

VIII. ATTACHMENTS

- A. DETAILED *CURRICULM VITAE*

Mr. CONNOLLY. Thank you, Dr. Shay, and we will come back obviously to that thesis in questioning.

Ms. Johnson.

STATEMENT OF SUSAN R. JOHNSON

Ms. JOHNSON. Mr. Chairman, on behalf of AFSA and the employees of the member agencies, I thank you for the opportunity to speak before this committee on the subject of benefits for Federal employees deployed abroad. AFSA warmly welcomes the renewed bipartisan commitment to investing in our civilian diplomatic and development services.

Key to that investment is ensuring that all of the men and women who are patriotically serving our country overseas, particularly in combat zones, whether military or civilian, are being taken care of and receiving well-earned benefits, making the focus of this hearing both urgent and welcome. So thank you again.

The GAO report on human capital highlights the major compensation equity issue facing members of the Foreign Service, the loss of locality pay when junior and mid-level members of our services are deployed abroad. This overseas pay gap represents a major inequity within our agencies. Junior and mid-level Foreign Service members now take a pay cut to serve at 183 of 267 overseas posts—that is 68 percent of them—which often effectively zeroes out the hardship and danger pay allowances for everyone except those at the senior levels.

This problem faces Foreign Service personnel across the U.S. Government, not just at State, but also at USAID, the Foreign Commercial Service, the Foreign Agricultural Service, and the International Broadcasting Bureau.

I am pleased to report that the first steps to resolve this issue through a phased approach over 3 years have been taken, but further authorization language is needed to finish the job by 2011. Completely closing this gap and ending a longstanding and divisive inequity remains a top AFSA priority.

I would like to thank Secretary Clinton and Under Secretary for Management Pat Kennedy for their dedication and efforts on this issue and for working closely with AFSA to find a solution. And of course, we would like to thank the many Members of Congress that have helped correct this unintended inequity.

Turning to the other recommendations of the GAO report, overall AFSA supports the recommendations that GAO made to the State Department in this report. We also agree with State's response and its action plan to implement these recommendations, particularly the mandatory medical screenings upon completion of assignment in a combat zone. Members of the Foreign Service should not have to worry about being able to receive the medical care they need while deployed abroad, particularly in war zones.

AFSA agrees with the GAO that this policy needs clarification and encourages the Department of Defense and the State Department to coordinate and communicate the policy more clearly to employees deployed abroad.

AFSA applauds State Department's new Deployment Stress Management Program [DSMP], a community-based program to support psychological health of members of our Foreign Service as-

signed to high stress, high threat, unaccompanied tours. We look forward to working with the State Department to ensure that DSMP continues to meet the needs of the Foreign Service.

One area that the GAO report does not address, and that we would encourage this committee and the GAO to review, is support for dependents of Foreign Service members and other civilian employees who are deployed abroad at unaccompanied posts. We would like to see the services provided to family left at home brought more closely in line with those provided by the Department of Defense to military dependents in similar situations through the military one-source program.

Thank you for the opportunity to testify and for your support. We appreciate your leadership in convening this hearing and AFSA hopes to continue to be a resource to you and this subcommittee in representing the views of the Foreign Service.

I will be happy to answer any questions you may have.

[The prepared statement of Ms. Johnson follows.]



Testimony of Susan R. Johnson
President, American Foreign Service Association

House Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service
and District of Columbia
Chairman Stephen Lynch (D-MA)
September 16, 2009

Mr. Chairman, Ranking Member Chaffetz, and distinguished subcommittee members, the American Foreign Service Association (AFSA) welcomes the opportunity to speak before this subcommittee on the subject of benefits for federal employees deployed abroad. AFSA is the professional association and labor union representing our nation's Foreign Service personnel from the State Department, USAID, the Foreign Commercial Service, the Foreign Agriculture Service, and the International Broadcasting Bureau. AFSA strives to be a strong voice in Congress on issues impacting the career Foreign Service and their families. We take our responsibility to our members seriously. We are grateful to you for convening this hearing on this important issue. I will make an opening statement, as well as submit a complete statement, and will be happy to answer any questions that you may have.

If our national security is based on the three "D's": Defense, Development and Diplomacy, then our investment in the diplomacy and development legs of the three "D" stool are woefully out of balance. According to many reports, ninety six percent of our investment goes to Defense and Intelligence and only 4% to diplomacy and development. This leaves us with a very unbalanced stool. Our national security – and our military – will be better positioned when this imbalance is righted. The Foreign Service and the brave men and women who serve in it are the front lines of American diplomacy and provide that key component of our national security. They come from communities from all over the country and are patriots representing our best values abroad. They spend almost seventy percent of their careers overseas, and with roughly two-thirds of posts now deemed hardship posts, and more of these unaccompanied posts putting additional stress on families, our civilian Foreign Service works day to day to represent America around the world.

The Foreign Service has been facing serious staffing shortages. Since the 2003 invasion of Iraq, staffing demands on the Foreign Service have soared, but little was done to provide funding or authorization to hire new personnel, causing the Service to have to draw from some posts, leaving gaping vacancies at other critical posts. As a result, 12% of positions around the world and 33% of those in Washington remain unfilled. As recognition of the costs of underfunding

our civilian capacity has grown, in recent years we have seen a renewed bipartisan commitment to investing in and developing our diplomatic service as laid out in the letter signed by eight former Secretaries of State, including Secretary Rice, and as supported by President Obama and Secretary Clinton encouraging Congress to invest in "smart power."

A key to that investment is ensuring that the men and women serving our country overseas, particularly in combat zones, are being taken care of and receiving well-earned benefits, making the focus of this hearing both urgent and welcome.

The Government Accountability Office (GAO) report, titled *Human Capital: Actions Needed to Better Track and Provide Timely and Accurate Compensation and Medical Benefits to Deployed Federal Civilians* highlights the major compensation equity issue facing Foreign Service Officers, which is the loss of locality pay when they are deployed abroad from Washington, DC.

The pay gap that was created by the Federal Employees Pay Comparability Act of 1990 which added to the base pay of almost all federal employees a "locality" adjustment that represented the cost of attracting talent in a given geographical area. Since Washington, D.C. is where Foreign Service members are hired, initially posted and reassigned to D.C., their locality pay is based here. However, the law unjustly excluded overseas Foreign Service members from receiving this standard component of base pay. In 2004, legislation was passed that removed this disincentive from the pay of Senior Foreign Service members, but excluded junior and mid-level diplomats, who now currently take a 23.10 percent cut in base pay when transferring abroad. As the Washington, D.C. locality pay rate has risen from an initial 4.23 percent to 23.10 percent in 2009, Foreign Service personnel continue to see their compensation shrink.

This overseas pay gap represents a major inequity, has a serious impact on compensation, and often totally negates traditional hardship and danger pay allowances. Thus, junior and mid-level Foreign Service members now take a pay cut to serve at 183 of 268 overseas posts (68 percent) including 20 percent hardship differential posts such as Damascus, Tripoli, Libreville, La Paz, and Ulaanbaatar and even danger pay posts Amman, Bogota, and Tel Aviv. Losing the equivalent of one year's salary for every four or five years served overseas has serious long-term financial consequences, particularly in these times of economic trouble. This problem faces all Foreign Service personnel across the U.S. government below the senior levels, not just at State, but also at USAID, the Foreign Commercial Service, the Foreign Agriculture Service, and the International Broadcasting Bureau.

I am pleased to report that the first step in resolving this issue has been taken, but the difficult effort to ensure fair compensation for the Foreign Service is still ongoing. The FY2009 Supplemental contained a provision giving State the authorization to begin to close the locality pay gap, and has recently begun implementing the first one-third of the 23.10 percent. Additionally, the House passed version of H.R. 2410, the Foreign Relations Authorization Act, contained the required authorization language to close this disparity once and for all. We hope that the Senate will soon introduce their version of the bill.

However, this authorization expires at the end of the FY2009, and further language is required to allow State to continue with this first phase, as well as close the final two-thirds in FY2010 and FY2011 and successive fiscal years. Without this authorization language, State will not be able to continue closing this pay gap which would be a tremendous blow to the Foreign Service. I would also like to take this opportunity to thank Secretary Clinton and Deputy Assistant Secretary Pat Kennedy for their dedication and effort on this issue, and for working closely with AFSA to find a solution to this issue.

I urge this committee to talk to your colleagues on the House Foreign Affairs Committee, as well as the Senate Foreign Relations Committee and encourage them to get a Foreign Relations Authorization bill signed into law, and that the appropriators ensure that each agency has the funds to implement this change.

As this report highlights, there is also continuing ambiguity about civilians' eligibility to receive care at DoD medical facilities while deployed. Foreign Service Officers should not have to worry about being able to receive the medical care they need while deployed abroad, and should have clear guidelines from State and the DoD as to their rights to care. AFSA agrees with the GAO that this policy needs further clarification, and encourages the DoD and State to coordinate and communicate this to its employees deployed abroad.

Overall, AFSA supports the recommendations made by the GAO to State in this report, and additionally agrees with State's response and action plan to implement these recommendations, particularly the mandatory medical screenings upon completion of their assignment in a combat zone. Ensuring the health and well-being of the Foreign Service is of the utmost importance to AFSA. State has also recently implemented the The Deployment Stress Management Program (DSMP), which is located in Mental Health Services within the Office of Medical Services. The DSMP is a community based program to support the psychological health of Foreign Service Officers, Department of State (DoS) employees, and their families who are or will be assigned to high stress/high threat/unaccompanied tours. The DSMP provides information, referrals, initial assessment and brief treatment for problems related to the stress of deployment. AFSA applauds State on this newly developed program.

One area that was not covered by the GAO report that AFSA would encourage this committee and the GAO to review would be the services available to the dependents of Foreign Service Officers and other civilian employees deployed aboard at unaccompanied posts, compared to the services provided by the Department of Defense (DoD) to military dependents in similar situations. With post assignments lasting anywhere from one to three years, Foreign Service families go through a burdensome transition when their spouse is sent to an unaccompanied post, particularly when children are involved. The DoD has an excellent resource in Military OneSource, which provides a one stop shop for military dependents. While State's Family Liaison Office does provide very useful information, it does not have the same breath or depth as Military OneSource, which provides information for those deployed and those who stay behind. A civilian website like this one would be a clear benefit to all civilians deployed abroad.

AFSA remains committed to service all members of the Foreign Service, and to guarantee that they receive the benefits that they work hard for under increasingly dangerous and difficult conditions, and that those benefits reflect their service. We will continue our fight to fully close the locality pay gap, which is the biggest compensation inequity facing Foreign Service Officers. Again, thank you for the opportunity to testify and for your support. We appreciate the leadership you have shown in convening this hearing. AFSA will continue to be a resource to you and this subcommittee in representing the views of the Foreign Service. I will be happy to answer any questions you may have.

Mr. CONNOLLY. Thank you so much, Ms. Johnson. I thank you both again for your testimony and your forbearance as well with the vicissitudes of House voting patterns. Our earlier information, by the way, was we weren't going to have any votes until about 4 p.m. and of course so much for that. We voted a little after 2:30.

Let me ask you, Dr. Shay, first, and Ms. Johnson, your comments would be welcome, to what extent do Federal civilian employees have the same kinds of risks when they are deployed in the hostile environments as the military for psychological injury?

Dr. SHAY. Clearly, there are certain risks that they don't face. Every soldier faces the risk that he is going to fire his weapon at someone that he then realizes he shouldn't have and carries that on his soul for the rest of his life, and that is terrible, and civilian employees, unless they are armed, don't face that.

But in terms of the general exposure, both to personal threat but also, so to speak, the moral exposure to witnessing terrible things happening to other people, whether it is them getting blown up or, A, is brutalizing, B, and nobody is doing anything about it and the awful things that people witness in war zones can sear people.

Mr. CONNOLLY. Well, in other words, putting aside the first example you gave, presumably somebody for a given department, civilian employee is probably not armed or may not be authorized to be armed, but the second example you gave, we could witness the same horror and have—

Dr. SHAY. Absolutely.

Mr. CONNOLLY [continuing]. Virtually the same impact on us emotionally?

Dr. SHAY. That is right.

Mr. CONNOLLY. Ms. Johnson, your take on that.

Ms. JOHNSON. I would agree with the comments that Dr. Shay has made. Naturally, in some respects, the risks differ, but since World War II, 160 Foreign Service members have been killed in the line of duty, the vast majority of those as a result of terrorist attack, either blowing up of embassies, snipers, blowing up of cars or other attacks of the sort.

In addition, certainly in both Iraq and Afghanistan, civilian members who are serving in PRTs and are serving all over the country face many, if not all, of the same risks that their military counterparts do and certainly witness much of the violence and, you know, danger experienced by the military.

Dr. SHAY. If I may adjust that, military officers face strain—moral strain and moral injury based on things that they know were done by other people on the basis of their decisions or the information that they gave to others, and I would not be surprised if there are analogous injuries in the Foreign Service world where people know they made decisions or gave information that led to a horrific outcome, unintended outcome, but they carry that with them.

Ms. JOHNSON. I don't know to what extent this exactly relates to that—perhaps Dr. Shay would know better—but certainly we saw—and I served in Iraq from July through December 2003—and several of the Iraqis in the Foreign Ministry that I worked with were assassinated—targeted and assassinated directly as a result of visibly working and cooperating with us. So that is something that you do carry that here is someone that you have worked close-

ly with and who has worked with the United States who is then assassinated as a result of that.

Mr. CONNOLLY. Sure. You could feel terribly guilty unwittingly putting someone in a terrible risk.

Ms. JOHNSON. Exactly. Those are the things that you have to try to deal with.

Mr. CONNOLLY. Let me ask you a question. In light of that, the comparability of trauma exposure, when folks come home in the civilian work force, should they have available to them Veterans Affairs medical care? Should the VA be open to previously deployed Federal civilian employees?

Dr. SHAY. It appears to me that the VA or the vet centers were—as I have heard about for the first time today, I was unaware of this or the military treatment facilities. This is an obvious opportunity for Congress, should it wish to by legislation, to create that eligibility. That is sort of an obvious avenue for the Congress.

Mr. CONNOLLY. Ms. Johnson, any opinion on that matter.

Ms. JOHNSON. Well, I think that having options generally, you know, increases the ability to handle whatever issues that you are facing. So I think it is good, to the extent that we are facing a very complex, difficult problem and, to a certain degree, some uncharted territory. So my instincts tell me that, in those cases, having options are better than not having them.

Dr. SHAY. And, as I mentioned in another option for Congress, some entity like the GAO could do a study of what kind of expertise is out there outside of the normal places to find it—the VA, the vet centers, the military medicine establishment—and where these people are. I am not suggesting that they create a directory, but I think it is important, given the need, that these data be gathered and analyzed so that we know what the resources are.

Mr. CONNOLLY. You both heard the previous discussion with your previous panel members, and I wonder what your take is. I mean, some of the resident expertise in the world on, for example, brain injuries is at Bethesda.

Dr. SHAY. That is correct.

Mr. CONNOLLY. Some of the resident expertise in the world on fitting of prosthetic devices, dealing with amputations and rehabilitation related to that, including the emotional management of both, is at Walter Reed.

Dr. SHAY. Brooke Army Medical Center.

Mr. CONNOLLY. That is right, or the Army Medical Center, exactly.

So someone comes back from the State Department similarly injured with similar needs. He or she is, in theory, shepherded to the civilian side of medicine where comparable expertise does simply not exist.

And, as you heard, the State Department and the Department of Agriculture who were at this table weren't aware, actually were not aware, of the fact that DOD had opened its door in these circumstances on a case-by-case basis at their acceptance—my words, not theirs—and they have been good about it.

But if you don't know about it, you are not going to get the high-quality care available to your military counterpart who comes back

a wounded warrior and veteran. I wonder what your observations would be about that situation.

Dr. SHAY. Well, it is something that one becomes very familiar with when dealing with combat veterans, and that is that it is a matter of luck and can be very capricious as to whether the injured veteran and the resources get together smoothly and quickly and effectively, or they pass each other like ships in the night, or they collide in some terribly messy crash and everybody gets hurt.

So finding ways that this wonderful phrase, “seamless transition”—that is a great line of public prayer. The hard part is making it actually happen and happen reliably.

Mr. CONNOLLY. Ms. Johnson.

Ms. JOHNSON. I think it is excellent that the committee is focusing on some of these, I would say, over the horizon, but actually they are closer than that now. We are increasingly seeing civilians deployed in what we are calling, I guess, zones of armed conflict. It is inevitable, sadly, that more of them are going to be suffering various types of injuries, whether physical or psychological, moral, emotional.

I think we need to be looking at what is the sensible and effective way to provide, you know, fair and equivalent treatment. I don't know if it is the same. As Dr. Shay said, maybe this would be a very suitable topic for, you know, a study to take a look at it and see what is the best solution.

But the civilian side needs to be looking at what are we going to do to support our civilians who are serving in zones of armed conflict along with their military counterparts.

Mr. CONNOLLY. You all, AFSA, published its third annual poll about a year and a half ago now. Did you pick up anything in that poll in terms of attitudes of your members with respect to compensation and benefits while deployed in either Iraq or Afghanistan, on the quality of each?

Ms. JOHNSON. Well, if I could quickly summarize sort of the main results of that poll—and I hope that we will have a chance to do a followup one in the not-too-far future—certainly the pay disparity and the locality pay and the canceling out of hardship and danger pay was a top priority.

Iraq and Afghanistan staffing concerns of a broad variety came a close second.

Other things relate more to internal State Department procedures: unfair assignment and promotion policies. And one thing that maybe relates to this is a perception that the workplace in the foreign service is one of diminishing family friendliness and becoming more and more difficult to, you know, sustain or maintain family units and putting more and more stress on them, not just the members, the direct employees, but their dependants and their family.

I don't believe that it addressed directly the question that you asked, but that could be something we could look at in the future.

Mr. CONNOLLY. Yes. On the family friendly thing, I earlier this year was on a trip to a country I won't name, whose Ambassador, U.S. Ambassador, was married to another U.S. Ambassador who was in a very different country in a very different part of the world. And it made you wonder. I am sure that is a good thing; I am glad

we are tapping into their talent. But it has to be a strain on their marriage and their family.

OK, Dr. Shay, I have to give you this opportunity. You have written two wonderful books. And if you were to write a third, "From Achilles to Odysseus," how would you compare the experience you document on Vietnam? I mean, what are the differences and similarities with the experience we are now experiencing in Iraq and Afghanistan compared to Vietnam?

Dr. SHAY. Well—

Mr. CONNOLLY. Don't write the third book here, but give us sort of a preview.

Dr. SHAY. I have a third book that is really for military professionals and policymakers called "Trust Within Fighting Forces" that has been hanging around my neck like an albatross, and I am trying to get it off its bottom.

But I am the guy that said war is war is war is war, and it hasn't changed in 3,000 years as far as what matters in the heart of the soldier. And the obstacles to returning to civilian life, many of those haven't changed in 3,000 years. As long as humans pursue this hideous practice of war, it is going to hurt people, physically and psychologically. And we have to protect them as best we can and heal them as best we can when they do get hurt.

Mr. CONNOLLY. Anything in particular strike you as either absolutely similar to or absolutely different from the previous experience in Vietnam when you are looking at it?

Dr. SHAY. The climate in Vietnam is very different than the climate in Iraq and Afghanistan, or at least most parts of it. I think there are some quite tropical parts of Iraq. But, honestly, not much strikes me. I don't know of anybody who talked about the dust storms in Vietnam.

Mr. CONNOLLY. I guess I was getting at not so much the difference in climate and geography as the similarities or differences in trauma or injuries suffered by our—

Dr. SHAY. Well, insurgencies are wicked hard on the combatants, in that the enemy is intentionally blurring the distinction between armed combatant and, "legitimate" targets, necessary targets, and protected persons, to use the terminology of the law of warfare.

I think it is clear in this conflict, as it was in Vietnam, that the distinction between a legitimate target and a protected person means everything for the future mental health and moral integrity of the person who has been in war. And those people who glibly say, "Oh, there are no rules in war," don't understand the heart of the soldier. They don't want to know themselves to be murderers.

And I know for a fact that this is the point of view of our military leadership today. I just, a couple weeks ago, spoke to the commanders' conference at the 101st Airborne. And they made it very clear that the moral dimension of what they do is critically important to them. And I, for one, stand up and cheer, because it is what will protect their mind and spirit.

If I can just make one comment about what we have heard in the previous panel, I got a clarification on the fly about this 41,000 civilians number. And I am told that is 41,000 Department of Defense civilians. So this number does not include any other Federal employees, No. 1. And, No. 2, it totally leaves out Federal contrac-

tors who are working either directly under Federal contracts or are working for subcontractors.

Mr. CONNOLLY. Right. And that number could be in the hundreds of thousands.

Dr. SHAY. So the population that we are talking about is not 41,000; it is much larger.

Mr. CONNOLLY. Very good point. Because we know that there are AID folks and contractors associated with that. We know that there are Department of Agriculture people, Department of Labor people, so forth and so on. So there are lots more than just the 41,000 that serve with DOD.

I want to thank you both so much for sharing today and your thoughts. If you have additional material you want to submit into the record, we would be delighted to have it.

And I want to thank you again for your forbearance with our schedule today. It is very helpful to this committee and to the subcommittee.

We stand adjourned.

[Whereupon, at 5:15 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

**Questions for the Record Submitted to
Principal Deputy Assistant Secretary Steven Browning by
Chairman Stephen Lynch
Subcommittee on Federal Workforce, Postal Service
and the District of Columbia
House Committee on Oversight and Government Reform,
September 16, 2009**

Question:

What actions has the State Department taken to consult and coordinate with DoD and other executive agencies to determine and establish policies and procedures to accurately identify and track standardized location-specific information on civilians who have deployed?

Answer:

After consulting with other executive agencies, including DoD, and considering the options, the Department of State is developing our own system to track deployed employees. The Office of Medical Services plans to track those who have served in conflict zones by collecting contact information for all deployed civilians when the employee consults with the Post Medical Officer and receives their health records prior to departure from post. Further, the Office of Medical Services is working with the Bureau of Human Resources to identify those employees who have deployed within the past three years and gather the required information for these civilians and incorporate them into our tracking system.

Question:

How many civilians have deployed both from the State Department and under State's purview since the beginning of operations in Iraq and Afghanistan, respectively? Additionally, what mechanisms did the State Department use or will use to calculate this number and how confident is it regarding the accuracy of this number?

Answer:

The number of personnel who have served under the Department's purview in Iraq and Afghanistan is provided below and includes those on assignments of six months or more, Department of State Direct-Hire employees, employees hired under 3161 authority, Third-Country Locally Engaged Staff (LE Staff), Personal Services Contractors (PSCs), and Eligible Family Members (EFMs). These numbers were compiled using assignment software as well as Bureau-maintained spreadsheets. The information is considered reliable.

Iraq – From the opening of the Office of Reconstruction and Humanitarian Assistance (OHRA) in January 2003 to November 2009, the Department has had 2,443 personnel under its purview in Iraq.

Afghanistan – From the re-opening of our Embassy in Kabul in December 2001 (with employees assigned beginning in 2002) to November 2009, the Department has had 1155 personnel under its purview in Afghanistan.

CHARRTS No.: HOCR-06-001
House Government Reform Committee
Hearing Date: September 16, 2009
Subject: A Call to Arms: A Review of Benefits for Deployed Federal Employees.
Congressman: Congressman Lynch
Witness: Ms. Fitzgerald

Question: #1

Question: What actions has DoD taken to clarify its guidance regarding the provision of medical care to federal civilians at military treatment facilities following deployment, and what actions has DoD taken to formally advise non-DoD agencies of the circumstances under which such care can be provided to their civilians given that two of the agencies at the September 16 hearing reported being unaware of this policy during Subcommittee briefings?

Answer: The Department has taken the following actions:

Posted the policy and procedures on the Civilian Expeditionary Workforce (CEW) website: (<http://www.cpms.osd.mil/expeditionary>).

Developed a standard form for requesting approval to use a military medical treatment facility (MTF), which can be submitted both electronically on the CEW website and through the mail (in coordination to be available late January).

8Developed and posted on the CEW website, a power point training aid that specifically addresses the medical eligibility of non-DoD Federal civilian employees at DoD medical facilities. Non-DoD Federal employees deploying from a CONUS Readiness Center (CRC) or Army Corps of Engineers Deployment Center (UDC) will be required to take this training prior to their deployment.

Developed and posted Frequently Asked Questions and Answers (FAQs) on the CEW website, with a "Contact Us" feature to submit questions and receive a response within 2 business days.

Developed a letter to all Federal agencies notifying them of DoD's policies governing medical care during and after deployment, the procedures for requesting approval to access a military MTF, the online training available, FAQs, and how to contact DoD for further questions (in coordination to be released early January).

Question: #2

Question: How many deployed civilians is each case manager responsible for and how were these requirements established?

Answer: The number of deployed civilians assigned to each case manager varies based

on the number of civilians deployed overseas at any given time. Currently, each case manager is responsible for approximately 22 deployed civilians. As the newly established Civilian Expeditionary Workforce Readiness Cell grows in personnel, the case load per number will decrease. The responsibilities and requirements of the CEW Readiness unit's case managers were established in DoD Directive 1404.10, January 23, 2009. Case managers guide and direct all deployed civilians to available resources, provide intervention in problem claims, and work with the Service component's Injury Compensation Program Administrators' (ICPA) to help injured employees navigate the Office of Worker's Compensation Program (OWCP) claims process. ICPAs are specifically trained to provide outreach and support to all injured or ill civilians, help them meet their burden of proof, and ensure that they receive the benefits to which they are entitled.

Question: #3

Question: What is the current status of the civilian human resource offices in Iraq and Afghanistan?

Answer: The Department has a fully established civilian human resource office/capability in Iraq and Afghanistan to serve deployed civilians in an expeditious manner. There are currently two Human Resource Specialists in Iraq and Afghanistan assisted by multiple Defense Finance and Accounting Service (DFAS) civilian pay liaisons. In-theater human resources representatives work in coordination with the CEW Readiness unit, the Senior HR Advisor in Central Command, and the Office of the Secretary of Defense for Civilian Personnel Policy (CPP) to provide assistance on matters related to compensation, benefits, and entitlements.

Questions for the Record from Chairman Lynch
September 16, 2009
Hearing on Benefits for Deployed Civilians
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
Committee on Oversight and Government Reform

1. **Under 5 U.S.C. there is currently no schedule award compensation for the brain, back and heart. Given the serious injuries that federal workers are experiencing in current conflicts—and living through—these exclusions result in injuries that are unable to be compensated. Of note, military personnel are compensated for such injuries. Does the Department of Labor feel changes are needed to update these awards?**

The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP) provides a wide variety of benefits to federal employees for work-related injuries or illnesses and to their surviving dependents if a work-related injury or illness results in the employee's death. A federal employee who suffers a work-related injury receives comprehensive medical benefits with no deductible or co-payments, compensation for any wage loss caused by the injury (either 75% or 66 2/3% of salary tax-free, and is also eligible for vocational rehabilitation and retraining if unable to return to full employment with his or her agency. A federal employee who is seriously injured with a heart, brain or back injury (or any other covered injury) is eligible to receive all the compensation benefits listed above. If an employee is killed in performance of duty or later dies from a covered injury, FECA survivor benefits are also payable. As addressed more fully in question two below, a FECA death gratuity of up to \$100,000 (offset by other death gratuities paid by the United States) is also payable for a covered death that results from the employee's participation in a contingency operation.

A schedule award benefit under 5 U.S.C. 8107 may be paid for loss of or loss of use of certain specified organs, vision and hearing; the Secretary of Labor has authority to add additional organs but is explicitly precluded from adding the brain, back and heart as organs to the schedule. See 5 U.S.C. 8107(c)(22), 8101(19). Given the extensive benefits already available under FECA to injured employees who suffer disabling or fatal injuries to the back, brain and heart, the Department of Labor (DOL) is not persuaded that convincing justification has been presented sufficient to overcome Congress' previous determination to exclude the heart, back and brain from eligibility for payment under FECA's schedule award provision, and suggests that the matter be carefully studied before such a change is made. While some state worker's compensation programs do provide schedule compensation for the heart, back and the brain, other such programs do not.

Department of Defense and Department of Veterans Affairs (VA) disability ratings are assigned under the VA Schedule for Rating Disabilities. Ratings in the VA rating schedule are based on the average loss of wage-earning capacity resulting from specific

injuries, rather than an individual's actual measured impairment, as the FECA schedule award provision requires. The Department of Labor recently was invited to and attended a working group meeting of agencies (including the Office of Personnel Management, the Department of Defense, and the Department of State) aimed at exploring benefits and injury protection for civilians in zones of armed conflict. Alternative payment systems, analogous to the Traumatic Injury Protection program for military personnel insured under Servicemembers' Group Life Insurance, may be considered a more effective approach with respect to assuring comparable coverage for deployed civilian employees.

2. Has the Department of Labor authorized any payment under the \$100,000 gratuity? Additionally, have any retroactive payments been authorized?

FECA was amended on January 28, 2008, by adding a section 8102a (5 U.S.C. § 8102a). This new provision of FECA creates a death gratuity for federal employees (and employees of nonappropriated fund instrumentalities (NAFI)) by requiring the United States to pay up to \$100,000 to the survivors of "an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation." Unlike other death gratuities, this death gratuity was placed within FECA and is administered by the DOL Office of Workers' Compensation Programs (OWCP) as part of the FECA program. OWCP has issued an Interim Final Rule (IFR) implementing the death gratuity amendment which was published in the Federal Register for comment on August 19, 2009; the 60 day comment period has just closed. Prior to the publication of the IFR, the Department made \$91,000 in gratuity payments for a death that occurred in connection with a contingency operation after Congressional enactment of § 8102a.

While the death gratuity amendment to the FECA statute generally operates prospectively, it also provides that, "[a]t the discretion of the Secretary concerned," the death gratuity may be applied retroactively to deaths that occurred on or after October 7, 2001, if that death was a result of "injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom." 5 U.S.C. § 8102a (b). In connection with publication of the IFR, the DOL conducted outreach to determine whether any agency wished to opt out of Retroactive Coverage—none did. DOL has since sought the assistance of those agencies that deployed employees in identifying possible beneficiaries of employees who died during the retroactive period of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation. The Department of Defense has already assisted us with information and will also be assisting with NAFI claims.

We are in the process of developing a number of additional death gratuity claims, which requires review of the circumstance of the employee's death and determining whether any other federal death gratuity payments (which must be offset before benefits are paid) have been made. DOL is also continuing to urge employing agencies to inform all deploying employees of the opportunity to designate alternate beneficiaries and to identify any potential claims that may have arisen since enactment of this amendment to FECA.

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- 1. Unlike the military's Servicemembers' Group Life Insurance (SGLI), the Federal Employees' Group Life Insurance's (FEGLI) Accidental Death and Dismemberment coverage (AD&D) does not provide lump sum payments for brain injuries and burns. Does OPM believe a change is needed?**

We do not believe a change in the FEGLI Program is the appropriate way to address this issue, in view of the way FEGLI is funded. Two-thirds of the FEGLI premium cost for Basic insurance is paid by enrollees. Optional insurance is fully funded by enrollees. Adding insurance coverage for traumatic brain injuries to FEGLI would require raising premiums for employees and retirees. We do not believe it would be reasonable to require enrollees to bear the burden of increased premiums for benefits that should be fully funded by the Government. Instead, the Office of Personnel Management (OPM) is having discussions with the Departments of Defense, State, and Labor, and possibly other agencies, to identify any gaps in traumatic injury protection for civilians in zones of armed conflict and to explore a range of possible approaches to address any such gaps. In particular, we are looking at categories of traumatic injuries that are not currently covered under existing benefits programs for deployed civilians and considering how best to address those needs.

- 2. What are OPM's views on the increased use of 3161 term employees, and what actions are being taken to ensure that 3161 employees have access to medical and other benefits should they become ill once their term appointment has expired?**

In 2000, Congress enacted Public Law 106-398 (The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001), which included an amendment to title 5. This law added a new section 3161 to title 5 to create a statutory authority for employing individuals in temporary organizations (e.g., boards, commissions, committees). If these temporary organizations meet the criteria of section 3161, Federal agencies have the flexibility to appoint individuals on a time-limited basis to work in these organizations. Federal agencies are not required to use section 3161 to fill positions within temporary organizations. However, if they do, they may fill positions using temporary appointments, which last no more than 1 year, or use time-limited appointments that last more than 1 year. Time-limited appointments lasting more than 1 year confer eligibility for Federal benefits such as health insurance, while temporary appointments limited to 1 year or less do not.

Employees who have time-limited appointments lasting more than 1 year and health insurance coverage also typically have access to Temporary Continuation of Coverage (TCC) under 5 U.S.C. 8905a, provided they meet the eligibility requirements (e.g., were not terminated for cause). Under the American Recovery and Reinvestment Act of 2009, these employees would be eligible for premium assistance toward their TCC enrollments, provided their appointments end on or before December 31, 2009.

The Federal Employees' Compensation Act (FECA) administered by the Department of Labor provides all Federal employees (including those employed temporarily or under a time-limited appointment) who are injured in performance of a duty a wide variety of benefits, including medical wage loss benefits, schedule awards for permanent impairment due to loss of hearing, vision or certain organs, and vocational rehabilitation/retraining. Wage loss benefits for total or partial disability are payable for as long as the medical evidence indicates that the employee is unable to work due to the covered injury. Under FECA, injuries or illnesses that may manifest after Federal employment but are demonstrated to have been sustained during, or have resulted from, performance of duty while Federally employed are also covered as long as the injuries are properly documented, reported timely, and supported by the appropriate evidence. Survivor benefits are available if an employee later dies from a covered injury.

**THE PEN AND THE DOLLAR BILL:
TWO PHILOSOPHICAL STAGE PROPS**

By Jonathan Shay, M.D. Ph.D.

Department of Veterans Affairs Outpatient Clinic, Boston¹

[WITH LARGE GESTURES I PLACE PEN AND DOLLAR BILL IN
PLAIN SIGHT]

I come before you as a physician, an unlicensed philosopher, and a missionary for the veterans I serve. Primarily, I am their missionary to military forces: they don't want other young kids wrecked the way they were wrecked. The combat veterans I've worked with for eighteen years are a contentious bunch, but they are united on this one thing—protecting the service members who are serving now. This mission strongly colors my perspective in everything I say here. But it's also fair to say that I am an unreconstructed intellectual, and am deeply immersed in the perennial philosophic quest—what is this wonderful/terrible critter, this Human? I have come to see trauma as a vista-opening standpoint for inquiry and research as rich and productive in its own way as *e. coli*, *drosophila*, and *c. elegance*. It is not only a scientific crossroads from which to observe the interaction of brain, mind, social system, and culture, but a similar crossroads in philosophy for ethics, epistemology, and ontology. Now to the subject at hand, the diagnostic construct *Post-traumatic Stress Disorder* [hereafter PTSD] of the American Psychiatric Association's *Diagnostic and Statistical Manual* [hereafter DSM]

My interest in preventing psychological and moral injury in

¹ Dr. Shay has been a Staff Psychiatrist at the VA Outpatient Clinic, Boston, since 1987. In 1999-2000 he performed the *Commandant of the Marine Corps Trust Study*, in 2002 was Visiting Scholar-at-Large at the Naval War College, and in 2004-2005 was Chair of Ethics, Leadership, and Personnel Policy in the Office of the US Army Deputy Chief of Staff for Personnel (G-1). He is the author of *Achilles in Vietnam: Combat Trauma and the Undoing of Character* (1994) and of *Odysseus in America: Combat Trauma and the Trials of Homecoming* (2002), with a joint Foreword to the latter by Senators McCain and Cleland. A book with working title *Trust within Fighting Forces: Its Significance, Its Creation, Maintenance, and Destruction* is currently in preparation.

DISCLAIMER: These remarks are the author's personal view and do not represent any official position of the Department of Veterans Affairs, the Department of the Navy (including the Marine Corps), or the Department of the Army.

military service, and about ten years of missionary adventures with the US Armed Forces has led me to advocate the use of the word “injury” in the nosology, rather than “disorder,”² for the following reasons:

- The word “disorder” would be transparently ludicrous in an analogous physical injury setting: Missing Arm Disorder [MAD] for a veteran with a traumatic amputation of his arm!
- Injury in the line of duty is honorable. Illness, malady, disorder, is at best unlucky (no soldier wants an unlucky comrade in a fight!). “Injury” is more culturally acceptable, less stigmatizing, less of a barrier to seeking help.
- The relation between injury and subsequent complications is typically clearer and mindsets more *proactive* than for the relationship between illness and subsequent complications of that illness. Right from the start, Medics/corpsmen and military surgeons think about preventing complications of wounds—such as hemorrhage and infection.

I have proposed that everything would be greatly simplified and still in accordance with the facts, if we viewed the primary psychological injury as ***persistence into the time after danger/horror/deaths of comrades has passed, of valid psychological and physiological adaptation to that traumatic situation.***³ While the primary injury can sometimes be severe enough to wreck a veteran’s life or disable an active service member, this is not always the case, just as

² Canadian Forces has adopted this terminology, “Operational Stress Injury.”

³ I leave it to the reader to notice that most of the items in the PTSD diagnostic criteria fit this description. I see the intrusive symptoms the workings of very ancient forms of *learning* about danger; the avoidant symptoms as the persistent shutdown of emotions or ways of thinking that do not immediately serve (or that impair) survival of the danger, and the hyperarousal symptoms as mainly the persistent mobilization of the mind and body for danger. The mapping onto Criteria B, C, and D is not exact and the differences are beside the point. The main point is that the primary injury is *persistence* of formerly valid adaptations into a new condition of life where they now are maladaptive.

If this is the case, consider now the quandary of military leaders, policy makers, mental health professionals, and chaplains as they ask themselves, “Do I want to deprive this returnee of his adaptations, when we know, and he knows that he is going back in six months?” For this reason, a Navy/Marine Corps program called Warrior Transformation got rebranded as Warrior Transition.

with physical injuries.⁴ Often a primary psychological injury will cause a *focal* disability, such as the combat infantry vet who has a non-negotiable aversion to showing up in the open in a crowd, like at his son's or daughter's Little League game.⁵

I have argued that, as with physical injuries, the *complications* can be devastating or lethal. Hemorrhage and infection are complications of ballistic and burn injuries, and control of these complications has been the root miracle of modern military medicine. In psychological injury, the complications alcohol/drug abuse, suicide, criminality, danger-seeking can be fatal or utterly wreck the lives of the veterans, their families and sometimes workplace and community. Destruction of the capacity for social trust, a major non-lethal complication of psychological injury, derails human flourishing, and deforms character, absent recovery. So everything that controls complications of psychological injury and promotes their prevention is a BIG plus. In military mental health we are nowhere close to what military medicine accomplishes against complications of physical injury.

Now to the first of my props.

I pick up the pen and announce, "On the count of three, I shall drop the pen...One, Two, Three," and I drop it on the desk before me. Less than eight seconds have elapsed.

I have just given a very compact and very accurate account of a human act. The account, the ability to give the account, the little pantomime it delivers, your capacity to hear and understand it, to observe it, to match your observation of the physical act to the speech act that preceded it are all evolved biological capacities with anatomical and physiological facilities necessary to their performance as given. Mind, society, and culture are all demonstrably present in this bit of philosophical theater, but let us leave those aside for the moment

⁴ E.g., GEN Rick Shinseki, USA, ret. has a prosthetic foot from Vietnam, and a Marine Lieutenant General I worked with in the *Commandant of the Marine Corp Trust Study* has facial scarring and jaw deformity from Vietnam.

⁵ This would be analogous to impairments of Shinseki's ability to run, of the Marine general's ability to chew on the wounded side of his mouth.

I shall consider two reductionist accounts of my simple skit:

One is at the level of basic physics and chemistry. Is it within our ability to give a strict deterministic account at the level of atoms and electrons? While we are quite good at this under very special conditions with a few atoms and their outermost electrons, we have neither the technical means for mapping this from the individual atoms and their electrons in my brain, upper limb and vocal apparatus, your ears and brains, nor the data storage and computation capacity to complete the reductionist project for this modest little skit.

So which account has epistemic superiority here? The compact, efficient, and accurate one produced by human evolution or the not-yet, and maybe-never promise of future scientific and technical advances lying scores of Moore's-Law-doublings in the future?

Well, that was a straw man, especially before a group of practicing neuroscientists and their colleagues. So what about a semi-deterministic account that accepts as given, that the atoms of my body are arranged in special ways which we currently group as Pacinian corpuscles, forearm muscles, peripheral afferent and efferent nerves, central neurons and tracts? Well, here too, our claims-in-principle are far in advance of our claims-in-practice. We are decades, perhaps many decades from anything resembling a "complete" neurophysiological account of my eight second skit and of your accurate and easy grasp of what I have said and done.

If I had Parkinson's disease and could not initiate the movement of my hand toward the pen or release it if I already held it, *if* I had multiple sclerosis and wildly missed the pen with my hand when I reached for it, the merit and utility of the semi-reductionist account would be immediately obvious and beyond dispute. For almost all of a neurology patient's life-purposes, that semi-reductionist account holds superior promise, compared to other accounts.

The question before us, as I choose to see it, is whether the diagnostic entities of the present or any future *DSM* should be, or can be culture-free, social process-free, narrative-free brain dysfunctions akin to

Parkinson's disease and multiple sclerosis. The human critter is *at every moment* brain, mind, society, and culture. These four manifestations of the human co-evolved in relation to each other as each other's environments during the Upper Paleolithic. There's nothing unusual about an animal co-evolving in relation to a micro-environment of its own creation. It is generally true that whole life-cycles (of which molecular genes are a part) are perpetuated in future generations, not the genes alone. The termites build their nests; the nests shape the anatomy and physiology of the termites; nests and termites co-evolve.

I do not dispute that brain diseases, including "inborn errors of metabolism" as we quaintly used to call them, can in themselves cause distinctive mental and social dysfunction. What I dispute is the inverse: the explicit or implicit claim that presence of a distinctive mental and social dysfunction demonstrates the presence of a brain disease and/or "inborn errors of metabolism." Another way of stating what I dispute is—that bad experience causes *only* PTSD and cannot cause any *other* DSM diagnosis.

Coming back to the dropping pen...Is a veteran's compact explanation of his current depression epistemologically inferior to learned talk about neurotransmitters? On what basis are we to believe that?

This brings me to my second prop.

We have all been raised to believe—I know I have—that natural facts, like the heartbeat or the liver, have a different ontologic standing than, say, the Red Sox, which is a human cultural, social, and mental construction. Of course we can point to demonstrable physical facts about the Red Sox, such as Fenway Park, but whatever those physical artifacts are, they are entirely part of this human creation, the Red Sox. The heartbeat or the liver or quartz crystals are somehow "given," not made, at least by us—not humanly constructed, except to the extent that when we talk about them to each other we inevitably add some interpretation, at minimum the subtle flavors imparted by different languages. But natural entities have an irreducible ontologic standing that remains when social and cultural construction has been subtracted,

while *nothing* remains of the Red Sox when social and cultural constructions are removed. We hold the liver to be “really real” in senses that the Red Sox are not.

What is the ontologic standing of the DSM diagnoses? Liver or Red Sox? Are the diagnostic entities of the DSM facts of nature like the liver, unrelated to cultural construction, social interaction, or personal history? Are they manifestations of “underlying” biology, even if we are currently incapable of detailing that biology? Promissory notes about future biology are thick on the ground everywhere in medicine. However, in psychiatry we have a formal epistemological resource, which comes to us from our colleagues in the discipline of Psychology: psychometric properties—construct validity, inter-observer reliability, and good-enough scaling.

While never explicit in the DSM, we have been encouraged to believe that the good “psychometric properties” of the DSM diagnoses point to as yet undefined acquired or inherited defects in neurophysiology or anatomy, which are as free of human agency as the heartbeat.

Which brings me to my second prop, this \$1 bill. It is my pitch to be ruthlessly honest with ourselves and others about what we learn about a construct when we can demonstrate that it has “psychometric properties.” Strong legitimation of the DSM diagnoses by good psychometric properties has been borrowed by governments, universities, health care organizations, health cost reimbursement sources, courts, disability insurers, etc. The DSM has become institutionalized to a degree undreamed of 30 years ago. As temporary guides to perception and communication these constructs have great utility, but do they warrant the ever-increasing institutionalization that has crystallized around them? They do not.

I reject the culturally legitimizing claim that demonstration of good psychometric properties for a DSM diagnosis somehow substantiates for it an experience-free biological origin—an as-yet unidentified inborn or acquired error of metabolism. Solid psychometric properties are widely seen as the visible projection of “underlying” biological reality—an ontologic plane that is more real than the plane of anything directly or

indirectly made by human activity. The best practitioners neither of psychometrics nor of biological psychiatry actively make or even believe this claim. If challenged, most will deny that psychometric properties are probative of pristine, unmade human essence. However, these same experts are strikingly silent when it comes to disabusing those who treat the implied biology/psychometric properties link as a source of the political, social, and cultural legitimation of the institutional, economic, legal, and political uses of the diagnoses.

By now some of you will have already surmised how I plan to use this dollar bill as a stage prop. *Nothing* in psychology or psychiatry has stronger construct validity than this piece of paper; *nothing* has better inter-observer reliability. It even scales as a *real number*—Can you beat that?!—and yet not a soul will claim that the dollar, or money more generally, is anything but a very recent human creation, taking appearance of *Homo Sapiens* as the time frame. To be sure, money requires “underlying” biological capacities, such as language, and the cognitive/emotional capacities to value things at all. But then the Red Sox also depend upon “underlying” sensorimotor capacities to engage in the human practice of baseball. Despite money’s greater antiquity and near universality, compared to the Red Sox, I submit that its ontologic standing is way closer to the Red Sox than to the heartbeat.

I turn now to a related issue in the DSM nosology:

At the risk that you think I contradict myself and try to “have it both ways,” I want you to understand that I am not trying to make trauma the cause of *all* mental distress and dysfunction. I don’t believe that, having myself had personal experience with a fierce propranolol-induced depression after a brain infarction at age 40 from hemiplegic migraine. I have no doubt whatever that as-yet to be discovered inborn errors of metabolism and brain diseases *can* cause some phenomenologies outlined in the DSM. The question I want to raise with you is whether it is credible that bad enough experience can cause *no other* DSM disorders, such as Major Depression, Bipolar Affective Disorder, Panic Disorder, etc. The DSM is famously agnostic about the causes of most disorders within its covers, again excepting PTSD. In many quarters, there is a wink-and-a-nod understanding that that

agnosticism will soon be swept away by progress in biological psychiatry revealing the genetic or acquired brain diseases “underlying” the DSM diagnoses.

It is contrary to fact that bad experience can *only* cause PTSD, and as corollary, cannot cause *other* DSM diagnoses, unless they are “associated...mental disorders”—“associated” with PTSD, that is. A trauma survivor who does not “make” the diagnosis of PTSD at the moment he or she is being evaluated may still suffer post-traumatic—

- Affective phenomena that add up to DSM affective disorders—both mania and depression
- ... DSM psychotic disorders
- ... Other non-PTSD DSM anxiety disorders
- Deformities of character and personality that add up to DSM personality disorders
- DSM alcohol/substance abuse and dependence disorders

Acquired or inborn “errors of metabolism” or other disordered brain physiology *can* certainly cause or contribute to the above. But trauma alone can *also* cause them. To deny this is contrary to fact.⁶

To assert, for example, that trauma can *never* cause, a stand-alone depression in the absence of a hidden pre-existing “diathesis” (demonstrable only with some always-in-the-future, not-yet-existing technology) is to make a claim that cannot, in principle, be refuted by empirical evidence. Thus is not a scientific claim. Such unscientific claims are made especially about personality disorders, about which more later.

I hope that it is clear that I do not reject pre-trauma robustness or

⁶ Dr. Mark W. Miller, a fine young researcher in Dr. Keane’s section of the National Center for PTSD, wrote to me in response to a prior draft of this the following: “The data show that PTSD may be the most common psychiatric syndrome to develop following trauma (Green, Lindy, Grace, Leonard, 1992; Kulka et al., 1990) but other conditions frequently co-occur with the disorder, or develop independently of it, including other anxiety disorders and the unipolar depressive, substance-related, and personality disorders (Breslau, Davis, Andreski, & Peterson, 1991; Breslau, Davis, Peterson, Schultz, 2000; Davidson, Hughes, Blazer, & George, 1991; Helzer, Robins, & McEvoy, 1987; Kessler, Sonnega, Bromet, Hughes, & Nelson, 1995; Kulka et al., 1990; Orsillo et al., 1996; Golier et al., 2003).” In general, I am not a good source for the current psychological literature, but Dr. Keane and others at the NCPTSD are. (With Dr. Miller’s permission.)

vulnerability (= “diathesis”?) as part of an overall analysis of *every* injury, including bones broken on the ski slopes. It would be completely contrary to fact to say that prior robustness/vulnerability make no difference, and when speaking of this make the following analogy: A stone the size of a golf ball is dropped from a height of one meter onto the shin, respectively of a frail elderly person with osteoporosis, and of the circus strong man. In the former instance the bone breaks; in the latter, the stone bounces off without leaving a bruise. I then continue the analogy: But is the outcome different if a two-ton boulder is dropped on the leg of each? No. Both turn to mush. It is hard to evade the conclusion that the experiences of some combat veterans are the psychological and moral equivalent of the two-ton boulder.

To demonstrate through twin studies that there is a genetic component to psychological injury proves...what? There are such genetic components to bone fractures and to the healing of those fractures. So what else is new? My writing and your reading at this moment are physiological, psychological, social, and cultural, all at the same instant. None of these has ontologic priority—this one “really real” and the others merely epiphenomenal. The genetic research is very valuable, but it does not trump experience arising from the environment created by other human beings. Genes exist to respond to their environments; neither genes nor environments have ontologic priority. This is the thrust of the current explosion of productive research at the intersection of molecular genetics and embryology, and of both with research in evolutionary biology.

I now want to briefly point out a smaller contrary-to-fact issue in DSM PTSD—although it is no small matter to a veteran denied health or disability pension benefits because of it. Please keep this in mind as you work through your deliberations. Veterans denied VA benefits on the technicality of a poorly drafted diagnostic criterion often take the denial as an adverse judgment of the honorableness of their combat service. Combat veterans’ reactions to being dishonored can be very violent and dangerous to themselves and others. We need to get these things *right*.

Criterion A-2 [“the person's response involved intense fear, helplessness, or horror”] is contrary to fact. Here are some of the things wrong with it:

- “I didn’t feel a fucking thing!” is a frequent veteran response to the question “What did you feel when...” Or “Hate. I just felt hate and wanted payback”⁷
- There is substantial evidence that if a person dissociates at the time of the traumatic event[s], that person is more likely to be psychologically injured and that the injuries are likely to be worse than if he or she felt fear, helplessness, or horror at the time.

Veterans I work with who follow the news fear that this IOM study is simply an attempt to kill off the PTSD diagnosis and to deny both treatment and disability benefits based on that diagnosis.

It should be clear from my 18 years of work with combat veterans, my two books and other writings on combat trauma, that I am criticizing the diagnosis PTSD neither in order to discredit the idea that war can maim the mind and spirit as well as the body, nor to save the VA money.⁸ I would be aghast if anyone twisted my words to mean that the VA should push combat trauma out of its field of vision, and deny treatment and disability pension benefits. If anything, I want to see virtually *every* diagnosis in the DSM permit a post-traumatic coding, if the data made this compelling. As it stands it is possible for a Vietnam veteran to receive a diagnosis today of combat PTSD, having previously never been so diagnosed. Further, it is possible, at this late date, for that veteran to get a disability pension for this PTSD. The very same veteran coming for the first time to the VA with disabling, refractory depression since the Vietnam War, but with no VA diagnosis of depression within a year of discharge, no prior VA PTSD diagnosis to hang it on as an

⁷ Dr. Miller, the same researcher mentioned above wrote: “Fear, helplessness, and horror comprise only a fraction of the affects experienced by trauma victims at the time of the event and they are not uniquely predictive of the development of PTSD. Anger, shame, and others are also strong predictors.”

⁸ It pays to know history: After the First World War *The American Legion* led the fight to count psychological injuries—then “shell shock”—as compensable injuries.

“associated ... mental disorder,” probably could not get VA treatment for that as a service-connected condition—and definitely could not get a service-connected disability pension for depression. So I am not criticizing the DSM in an effort to save the VA money.

Those of you familiar with my books are aware of my interest in traumatic damage to good character. As a matter of scientific accuracy, I believe that it is essential that the DSM be corrected on this score. Life-blighting personality changes such as—

- Embitterment and extreme cynicism
- Hair-trigger expectancy of harm, exploitation, or humiliation
- “Strike first!”
- Fulminant xenophobia and prejudice
- Intimidation as one-size-fits-all social coping
- Demands for constant deference and tokens of honor

—are all elements of a malignant transformation of character that can destroy the life of not only the veteran, but of his family, co-workers, and neighbors. I have observed that veterans with unhealed combat traumatic personality changes are utterly disabled for democratic participation, and are especially available for recruitment by criminal gangs, terrorist groups and other violent extremist movements and cults.

Our colleagues in the World Health Organization do recognize in the ICD the possibility of “Persistent Personality Change after Catastrophic Experience.” I believe it is time for Americans to acknowledge it also.

If I express myself here on some policy dimensions of the DSM—knowing full well that they are not part of your charge—it is because I want to bring them to mindful, conscious awareness, or else they can exert an invisible magnetic attraction or repulsion to thinking about the diagnostic constructs. I am not attempting to recruit you to support or oppose a policy regarding the eligibility of character-damaged veterans for VA health and disability benefits, so much as to seek to prevent the

lightning-fast self-censorship that takes place when an agile mind leaps ahead to an unacceptable policy outcome of a scientific result. The “don’t go there” reaction can happen in a millisecond and pass unnoticed, derailing a scientific inquiry before it starts. The scientific question here is whether bad experience can deteriorate adult good character, change adult personality.⁹ Here are the policy issues I think are in play:

1. Can post-traumatic character deformity be exculpatory in a criminal process?¹⁰
2. Should VA health coverage be extended to these deformities as service-connected injuries?¹¹
3. Should service-connected disability pension benefits be available to veterans with post-traumatic deformities of character?¹²

I am told that a number of you are familiar with my books *Achilles in Vietnam: Combat Trauma and the Undoing of Character* and *Odysseus in America: Combat Trauma and the Trials of Homecoming*. In the former, I formulated the causative side of “moral injury” as “betrayal of ‘what’s right’ in a high stakes situation.” The stakes don’t get higher than in war, and sometimes in training for war. People can and do die in both. It’s not hard to grasp that, when a beloved comrade dies, or a brush with death came because of betrayal of “what’s right” by someone who holds power, the psychological wound is worse and more prone to subsequent complications of character damage than that from

⁹ Philosopher/anthropologist Pierre Bourdieu referred to these invisible attractions/repulsions as the workings of occupational “habitus.” While working on this I found myself humming Leonard Bernstein’s satirical chorus of juvenile gang members, “Well, Officer Krumke, we’re really upset...” from *Candide*.

¹⁰ I oppose this, and have refused all requests to serve as an expert witness for either side in a criminal trial.

¹¹ Post-traumatic character deformities *can be successfully treated!*

¹² Cost/benefit analysis here, must be nation-focused, rather than federal government-focused, and take into account the economic costs, not only direct incarceration costs, but criminal victim losses, veteran family costs, etc. Health and disability pensions are superior to the all-too-common incarceration of veterans with unhealed character deformities. Incarceration (mostly at state, rather than federal) expense will remain the fate of the minority who do not recover despite good treatment and community support. I find the unavailability of VA physical and mental health benefits to incarcerated veterans to be utterly shameful. If you find that in contradiction to my avowal in footnote #11, so be it.

terror or traumatic bereavement alone. By rejecting the idea that bad experience can deform previously good adult character, American psychiatrists are in good company. They express an old and prestigious philosophic position, tracing its roots to Plato and the Roman Stoics and through them to Kant and Freud. It is both unscientific—and *wrong*. Bad enough experience can deform previously good adult character.¹³

Most psychiatrists, aspiring to be culture-free and objectively universalistic in their abstract constructs, “don’t go there” when sitting on committees and drafting diagnostic manuals. The same psychiatrists, when sitting across from any of these patients, will probably be sympathetic, helpful, and willing to bend the diagnostic criteria a bit, just to help these suffering souls. That’s not a healthy situation.

It has been a pleasure speaking with you and I appreciate the opportunity to speak my mind. May only good come from your efforts.

¹³ Philosopher Martha Nussbaum has shown how contemporaries of Plato, the father of this philosophic assertion, rejected it. See her Epilogue, “Tragedy” to *The Fragility of Goodness*.
 But what if nobody dies, no one is maimed? Should the nosology acknowledge moral injury when what is at stake is “merely” social honor? Sociologist Orlando Patterson has described the social processes of enslavement as “social death.” Lamentably the phenomenon of enslavement is all-too-prevalent, despite the world-wide end to public, legal, chattel slavery. Virtually everywhere we find prostitution and human trafficking, there is enslavement. In American prisons, the more brutal prisoners literally enslave the weaker ones, often with the connivance of the overstretched prison authorities. In a 1997 symposium on enslavement I compared Patterson’s social process analysis and showed them to be virtually identical to Herman’s description of conditions of “coercive control” that produce the multiple personality changes that she termed “complex PTSD.” (The symposium handout making this comparison is attached.)
 Mention of prostituted women and prison tier denizens may allow those familiar with these settings to say, “But in both there is a threat of death, a threat of violence, or repeated witnessing of same against others that brings it squarely under DSM PTSD.” But what if the “social death” consists of a non-violent, but comprehensive loss of social position, relationships, and resources, such as the National Guardsman who is sole support of his family, and during a much-longer-than-promised deployment loses his respectable job, house, car, and marriage? Or the academic who loses his funding and laboratory after being slandered by a senior colleague?

Symposium, *CALLING SLAVERY BY ITS NAME*, ISTSS Montreal November 8, 1997

**Handout for ENSLAVEMENT: CULTURALLY/HISTORICALLY WIDESPREAD
SOCIAL PROCESS WITH BROAD TRAUMA RELEVANCE**

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CHARACTERISTICS OF SYSTEMS OF COERCIVE CONTROL¹⁴

Summarized from Judith Lewis Herman, *TRAUMA AND RECOVERY*. New York, Basic Books, 1992. Chapter 4.

Level I — Resocialization

Barriers to escape
Control of body and bodily functions
What and when to eat
When, where, how much to sleep
Manipulation of body form (what to wear, body weight, haircut)
When and where to urinate and defecate
No privacy of bodily functions
Prolonged daily contact with power-holder in the group
Combination of enticement, force, intimidation
Power-holder as source of small rewards, comfort, and approval
Inconsistent, unpredictable, capricious, enforcement of rules
Monopolization of communication, resources, control
Secrecy regarding some activities and events
No alternative to seeing world through power-holder's eyes
Required repetition of buzzwords, songs, slogans, clichés, even if inwardly disbelieved, rejected

Level II — Breaking

Terror and helplessness
Loss of communication with all others outside
Conviction that others have forgotten or betrayed you
Renunciation, destruction of symbolic tokens of connection to others
Inconsistent, unpredictable, capricious, and violent enforcement of rules
Threats to close comrades
Debilitation by sleep-deprivation, starvation, exposure, drugs, alcohol
Paradoxical attachment to power holder as savior
Violation of own moral principles
Participation in sacrifice, victimization of others
Participation in immoral, disgusting, illegal practices
Betrayal of own basic human attachments
[Branding, tattooing, scarification]
[Serial rape]
[Other injuries and body invasion]

¹⁴ From *Achilles in Vietnam: Combat Trauma and the Undoing of Character*, pp150-152 By Jonathan Shay, M.D., Ph.D.

ENSLAVEMENT UNIVERSALS

Summarized from Orlando Patterson, *SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY*. Cambridge: Harvard University Press, 1982. Page references in [].

- Slavery represented as **substitute for death** in war, execution, and destitution [5]
- Natal alienation defined: no claims on parents, no rights in children, no sanctity of matrimony [6]
- Dishonored in a global, pervasive, generalized way [10]
- In slave systems, slaveholding **always** accrues honor to the master [11] and usually accrues honor to non-slaveholding freemen [cf. “bystanders” in trauma literature]
- “Slavery is the permanent, violent domination of natively alienated and generally dishonored persons.” [13]
- Two types of slavery—conceived as external enemies who have been subdued [intrusive 39ff], or internal people who have “fallen” through criminality or destitution [extrusive 41ff]. “We may summarize the two modes of representing the social death that was slavery by saying that in the intrusive mode the slave was conceived as someone who did not belong because he was an outsider, while in the extrusive mode the slave became an outsider because he did not or no longer belonged....One fell because he was the enemy, the other became the enemy because he had fallen.” [44]
- Rituals of enslavement [52ff]: forced symbolic rejection by the slave of his past and his former kinsmen [53f]; a change of name [54ff]; imposition of some visible mark of servitude [58ff]; shave head face or pubic hair [60f]; assumption of a new status in the household or economic organization of the master [62ff] Cf. Judith Herman, “Systems of Coercive Control”
- Honor and degradation [77ff]; Generalization: Slaveholding increases emphasis on honor throughout the slaveholding society, even among non-slaveholders [85ff]; Sambo degraded man-child ideologies in many cultures and eras [96f]
- Hegel and the dialectic of slavery [97ff] O.P. disputes the “existential dilemma” of the slave master relationship because the retinue of slaves increases the master’s honor in the eyes of the **non-slaveholding** segment of the free population. Historically and cross-culturally this is sometimes the only function for the slave who may have no economically productive role. Societies where there are only masters and slaves are *extremely rare* and apparently unstable.
- Original sources of slaves [105ff]: Capture in warfare; Kidnapping; Tribute and tax payment; Debt; Punishment for crimes; Abandonment and sale of children; Self-enslavement (usually to avoid starvation or being killed by third party); Birth
- Slave trade [149ff] may have been the earliest long-distance trade, long distance being barrier to running away as well as increasing sexual exoticism
- Condition of slavery [172ff]: Totality of master’s power in private is supported by public processes, customs, laws, attitudes; Absolute sexual access; Injure with impunity; Kill with impunity; Slaves punished more severely than free for comparable infractions

Ethical Standing for Commander Self-Care: The Need for Sleep

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Sleep is an emblem for the personal needs of the commander. Caring for these needs is significantly within the realm of the commander's choice as an ethical actor in situations when pressures are on him or her to choose to do other things. Because commanders can never delegate someone to sleep for them, choosing to fulfill this personal need is *self-care*.

Long-accepted research has shown that no act of will or ethical passion, no degree of training will preserve the ability to discriminate friend from foe, armed enemy from noncombatant, or a militarily useful target from a distraction after 96 hours of sleep deprivation. Well-conceived and executed scientific research has produced insights into the function of sleep in combat. Everyone can relate to the personal need for sleep regardless of service, function, rank, or geography. This article examines the ethical standing of a commander's own legitimate physiological and emotional needs when they collide with claims by the commander's subordinates, peers, or superiors. It does so by inquiring into the reasons why self-care by commanders has not been incorporated into the officer corps' common sense, habit, and standard practice.

Recognizing Conflicting Goods

For a very long time we have understood the deleterious effects of sleep deprivation on individual performance, social judgment, and indeed sanity.[1] Disciplined scientific study of the topic may be relatively new, but thoughtful and observant leaders have generally understood sleep deprivation and its effects on individual and unit performance in combat.

Consider the situation of a mechanized infantry battalion commander, 36 hours without sleep, deep inside Iraq. He has decided to rest his unit, and is about to lie down for some sleep. The artillery liaison officer now asks this commander to approve the fire plan for

the next 24 hours of the operation. The commander's operations officer, whose acuity of judgment and discrimination are only slightly less critical than his own, and who in the commander's absence would approve the plan, is asleep, because he's supposed to be asleep.

Here we are in a circumstance of conflicting goods, what ethical philosophers call conflicting incommensurable goods. The situation opposes the commander's sleep (one good) and the operational claims made by others, in this instance the artillery officer's very legitimate request (another good). This conflict cannot be measured with any common yardstick, reduced to any common coinage. They're both good, they're both needed, and they cannot both be fulfilled simultaneously.

In theory, an entirely detached and omniscient being could solve the problems raised by this collision of incommensurable goods. That detached player theoretically could reduce the time required to review planned artillery fires and the commander's need for sleep to some common measure of military effectiveness. Within the trade-off would be the ability of a potentially sleep-deprived commander to perform complex cognitive and social tasks, during an enemy counterattack that could come at any time. From such a god's-eye perspective, especially with advance knowledge of what actually will happen, the goods are commensurable. But from within the situation, that battalion commander will be unable to carry out a utilitarian calculation of the greater good in this conflict of goods--not in real time and in a state of exhaustion and anxiety.

Our recent philosophical tradition is weak in its ability to deal with the problem of competing, incommensurable goods.[2] Utilitarian ethics, institutionalized in modern America as cost-benefit analysis, is genuinely helpful when we can use a common yardstick of outcomes to meaningfully measure competing goods, provided we have the time and resources to make the measurement. But considerations of costs and benefits leave us at a loss when a common measure doesn't exist or cannot be found in time. In contemporary American military culture, the good of the commander's sleep usually loses out in collision with *any* other good.[3]

We would benefit from a dignified vision of the ethical standing of the self of the commander. In combat or on extended operations the commander is always concerned with the balance between mission requirements and the well-being of his subordinates. But the commander's willing neglect of his own need for adequate sleep can harm others--sometimes disastrously. It has long been known that there is a strong correlation between rates of psychological injury and of physical injury.[4] Catastrophic operational failure due to leaders' insufficient self-care, including sleep deprivation, can translate into wounds and deaths.

A Short History of Sleep as Self-indulgence

Why do the needs of the self of the commander have so little standing in our military ethical tradition? The following stories suggest that there is something indelibly heroic in the Western tradition about going without sleep.

Plato asks a brilliant commander, Alcibiades, to recall a scene from Socrates' military service. Unfortunately Alcibiades was as fatally flawed as our own Benedict Arnold; but as you read his account, bear in mind that this is a witness competent to talk about military things:

We were both sent on active service to Potidaea, where we took mess together. Well, to begin with, [Socrates] stood the hardships of the campaign far better than I did. . . . And if . . . we were cut off from our supplies, there was no one who put such a good face on it as he. . . . Socrates . . . made less fuss about walking on the ice in his bare feet than we did in our shoes. . . .

And now I must tell you about another thing . . . in the course of the same campaign. He started . . . about sunrise one morning, . . . and by about midday the troops noticed what was happening, . . . and began telling each other how Socrates had been standing there . . . ever since daybreak. And at last toward nightfall, some of the Ionians brought out their bedding after supper (this was in the summer, of course) . . . to see whether he was going to stay there all night. *Well, there he stood till morning, and then at sunrise he said his prayers to the sun [and went about his duties].*[5]

Alcibiades, a cavalry officer, continues with an account of how Socrates, an infantryman, saved his life by refusing to leave him behind, wounded, when they were overrun.

What Alcibiades admires are Socrates' immediately recognizable military virtues of fortitude in the face of physical adversity, steady self-control, mental clarity, mind over matter, self-sacrifice, and courage. His apparent immunity to fatigue and sleepiness are made an emblem of this larger constellation in Socrates' character. What is displayed as admirable in Socrates is his ability to go without, his self-denial.

When it comes to role models, few are more prestigious than Socrates, hardly less so in the modern world than in the ancient. He is one of Nietzsche's heroes, an *Übermensch*, who "overcomes himself" in a manner generally called stoic. While Socrates was an ancient Greek pagan, the equation between sleep and self-indulgence that Jesus makes in the Garden of Gethsemane implicitly comes to have cosmic significance for a Christian audience:

Then saith he unto them, My soul is exceeding sorrowful, even unto death: tarry ye here, and watch with me. . . . *And he cometh unto the disciples, and findeth them asleep, and saith unto Peter, What, could ye not watch with me one hour? Watch and pray, that ye enter not into temptation: the spirit indeed is willing, but the flesh is weak.* He went away again the second time. . . . *And he came and found them asleep again: for their eyes were heavy. And he left them, and went away again, and prayed the third time, saying the same words. Then cometh he to his disciples, and saith unto them, Sleep on now, and take your rest: behold, the hour is at hand, and the Son of man is betrayed into the hands of sinners.*[6]

In this particular version, there is the hint that the Disciples' self-indulgent sleep is somehow the cause of Jesus' betrayal.[7] In Plato's story, we hear nothing but praise for Socrates, with no monitory examples of people who lacked his fortitude. The Biblical account is more balanced between praise and blame, showing us the Disciples' shortcomings in this situation, as well as Jesus' merit.

The ethical position of self-care only got worse with the introduction of Stoic precepts, which then merged very powerfully with the stream of "shalts" and "shalt nots" from the Hebrew Bible. Maimonides, a 12th-century Jewish Bible commentator and Aristotle scholar who strongly influenced St. Thomas Aquinas, scarcely mentions self-care among the 248 positive and 365 negative commandments adduced from the Five Books of Moses.[8] These commandments are almost all duties toward God or toward other humans. Very few, such as commandments to rest on the Sabbath and on festivals, to rejoice in the festivals, to prohibit self-mutilation and tattooing, explicitly have the self as both moral agent and object. While the whole civilizing code of justice, compassion, and civic responsibility carries enormous benefit, the benefit is mediated by *others* fulfilling *their* duties.

In modern times Immanuel Kant set the question of personal duty at the top of everyone's agenda, reviving the Stoic and rabbinical emphasis.[9] In the Kantian universe, we lack confidence in our capacities for practical ethical deliberation in situations of conflicting goods, particularly when one of the conflicting goods is self-care.

Professional philosophers should not bridle at this account. For example, from a recently published symposium of ethical philosophers: "Over a large range of cases our ordinary thinking about morality assigns no positive value to the well-being or happiness of the moral agent of the sort it clearly assigns to the well-being or happiness of everyone *other* than the agent." [10] Similarly: "If I am faced with someone who has a valid claim of need, I cannot appeal to facts of self-interest in deliberating whether I should offer help, because self-interest *per se* cannot rebut a moral presumption." [11] Self-sacrifice is idealized to the point of becoming a duty. The Army's core values of Duty, Loyalty, Selfless Service, Honor, Courage, Respect, and Integrity do not appear to leave any standing for the preservation of a leader's own physiological or psychological capacity to lead.[12]

Perverse Outcomes of Overvaluing Self-denial

What is notably absent today is calm, assured, affirmative respect for the self of the commander that the same commander routinely accords to others. Respect for both contributes to prevention of psychological injury in war.[13] Conversely, lack of a decent respect for commander self-maintenance can lead to destructive outcomes, all of which contribute to greater or lesser degrees to psychological injury. Some of the perverse outcomes from misdirected self-denial include:

- Impaired ethical perception, making discrimination between self-indulgence and desirable self-maintenance nearly impossible. The two begin to look identical and equally forbidden.
- A cover-up mentality and solidarity: "If I censure that officer's self-indulgence how will I be able to take care of my own needs? Better to put it all away."
- Burnout, with gradual or catastrophic self-destruction.
- Needlessly compromised integrity: In order to engage in decent and necessary self-care, leaders sometime feel they have to lie, which impairs trust by subordinates, peers, and seniors who inevitably discover this. It needlessly drains the emotional and spiritual resources of the leader.

Sleep deprivation, in particular, promotes:

- Catastrophic operational failure.
- Fratricide and other accidental deaths.
- Otherwise preventable noncombatant casualties.
- Loss of emotional control and failure of complex social judgment--often the proximal causes of operational failure.
- Blind obedience to militarily irrational or illegal orders.

The ethical vacuum around the self of the commander promotes these perverse outcomes. We cannot successfully reduce such outcomes simply by redoubling rules and admonitions against them. To illustrate, let's consider instances of catastrophic operational failure.

Catastrophic Operational Failure

- *Naval warfare example.* On 9 August 1942, Japanese warships off Guadalcanal attacked and sank the cruisers USS *Vincennes*, *Quincy*, and *Astoria*, and HMAS *Canberra*, killing more than 1000 and leaving almost 700 wounded. Few American weapons of any kind were fired at the enemy during the engagement, resulting in negligible damage to Japanese ships and personnel. This episode, known as the Battle of Savo Island, has been studied extensively. My intent here is not to second-guess those analyses.

The enemy had substantial land-based air assets in the vicinity, which, according to the Navy Department's classified Combat Narrative of 8 January 1943, caused the aircraft carriers *Wasp*, *Saratoga*, and *Enterprise* to be withdrawn from the area. Crews of all vessels remaining in the area were placed in a state of continuous alert for air attack. The possibility of a surface threat had been fully recognized in the operational plans and ship deployments, but had received little command attention during three days of ship-aircraft engagements. A painfully simple explanation may account for the tragic outcome of the ensuing surface battle: severe sleep deprivation.[14]

The following quotations are from *The Shame of Savo* by Bruce Loxton and from the 1943 Combat Narrative.[15] To an observer alerted to the possibility, they have the earmarks of sleep deprivation:

No one on watch in *Blue* [one of the destroyer screens, about 30 minutes before the *Canberra* was attacked] saw, at a range of about a mile, a column of eight ships, five of which were about 10,000 tons, moving across the line of sight at high speed, and this on a night when *Chokai's* [the lead Japanese cruiser] lookouts could see a single destroyer, proceeding at 12 knots, at eight miles. . . . *Blue's* failure to see the Japanese is inexplicable and inexcusable.[16]

What is difficult to understand is why no signs of the battle to the south [attack on the *Canberra* and *Chicago*, star shells fired by the *Patterson*] were seen or heard by lookouts [on the *Astoria*], but the analysis suggests that they were distracted from their surface searches by looking for aircraft.[17]

No one has ever suggested that the lookouts on either the destroyers or the *Astoria* were asleep. Instead, they may have moved to the condition that Army Ranger School Candidates call "droning." It is a condition in which the candidates can put one foot in front of another and respond if challenged, but have difficulty shifting from one cognitive framework to another, or acting on their own initiative. The sailors and officers of the ships patrolling around Savo Island had been on anti-aircraft watch for three days and nights; perhaps failure to perceive the Japanese ships arose from the lookouts' inability to make the cognitive shift to surface search.

The account of the destroyer *Patterson's* captain getting it right, but to a heartbreaking lack of effect, similarly reveals the footprints of sleep deprivation among his officers. *Patterson* officers did in fact send an enemy sighting report to the other ships by blinker and by voice radio around 0143. The message was received in the *Vincennes* and *Quincy*, which were completely surprised by the Japanese attack that started at 0155, approximately 12 minutes later.

The *Patterson's* captain did turn to position his ship in perfect angle for a torpedo attack on the column of Japanese cruisers, but his order to launch the spread of eight torpedoes "was apparently not heard by the Torpedo Control Officer," supposedly because of the masking noise of distant gunfire.[18] One must consider the possibility here that the Torpedo Control Officer was "droning," and that the order to launch the torpedoes arrived during a random period of "micro-sleep" that someone standing upright and eyes open may slip into while droning.

The following narrative pertains to the *Astoria*:

The general alarm was still ringing and Capt. William G. Greenman, who had just been called, was astonished to hear the main battery as he awoke.

...

Capt. Greenman's first impression on seeing the flares and searchlights inside the bay was that our ships had sighted a submarine on the surface and that we were firing on our own ships. Lt. Cdr. Topper, who was on the bridge, reports him as asking, "Who sounded the general alarm? Who gave the order to commence firing? Topper, I think we are firing on our own ships. Let's not get excited and act too hasty. *Cease firing.*"

Upon this order, firing ceased. Someone on the port wing of the bridge reported searchlights illuminating our ships, while the word came from the main battery control that the ships had been identified as Japanese cruisers. . . . Then the JA talker reported, "Mr. Truesdell said for God's sake give the word to commence firing." The Captain then ordered, "Sound general quarters,"--it was in fact sounded this second time, --and almost immediately, "Commence firing," with the remark, "Whether our ships or not we will have to stop them." [19]

Signs of the corrosive effects of sleep deprivation on Captain Greenman in this account include impairment of the captain's capacity for trust in his subordinates to have done the right thing, and impairment of his ability, once he had arrived at an (incorrect) assessment of the situation, to take in new data and revise his assessment in the light of the new data. Note his perseverance. Having once formed an impression that he was in a friendly fire incident, he had great difficulty rearranging the data at hand into a new configuration, i.e., the enemy is here and firing on us.

This interpretation is not offered to disparage conclusions reached by others about such diverse matters as communications, training for night actions, the need for a flag officer on the *Vincennes* so that its captain was not overloaded, undue reliance on radar, or Admiral Turner's refusal of a Japanese language communications intelligence team. A New Zealand cruiser captain who served a year later in the Solomons wrote, "The reader who feels strongly about the unreadiness of the ships, the failure of communications and the poor lookout maintained, should himself experience the strain of trying to remain alert for several consecutive nights." [20]

- *Land warfare example.* The tragic, one-sided battle in the waters around Savo Island was selected to exemplify catastrophic operational failure because it has been so thoroughly studied and is so well known, not to reflect unfairly on the sea services. A retired Army officer with considerable operational experience provided the following example that is almost equally disturbing. Fortunately, because this operational failure occurred in a training context, lives were not lost.

The example is from a two-week, division-level, force-on-force exercise in 1986. [21] The field artillery battalion commander who was being observed was an outstanding leader by anyone's measure, not only in his technical skills but also in his ability to create a "band of brothers" among his officers. His development of subordinate leaders was so successful that many of these were taken from his battalion to be put in places where they were thought to be critically needed. This commander was a perpetual spring of

enthusiasm and never spared himself. Following his model, his subordinate commanders drove themselves mercilessly, as did his staff officers.

It was about ten days into the exercise, and everyone was very tired. The battalion commander, being security-minded, wanted to be sure that despite their fatigue, all his batteries were guarding their perimeters against infiltration. Because of one of the ideals that this commander held himself to--take care of your people--he did not want to cut into anyone else's sleep to test his units' alertness. Consequently he spent five hours that night trying to sneak into positions occupied by his own batteries.

The battery in question was the most distant from the battalion command post and it was the first one he tested. The battery commander, Captain X, had just gone to sleep when the battalion commander, having infiltrated the position unchallenged, entered his tent and whispered "BOOM!" in his ear.

Captain X remained awake the rest of the night. By morning he had resolved to "make an example" of the lieutenant who was his second in command for failing to keep the perimeter secure, and he theatrically humiliated him in front of the whole battery.

A couple hours after this public humiliation, at about 0800, a platoon of five "aggressor" tanks was spotted on a rise some four kilometers from this battery where the observer was making his notes. The tanks were moving at patrol speed, not firing, apparently not aware of the battery, but trying to find and destroy the division's artillery.

Certain things need to be mentioned here: the battalion had tank-killing air assets available; the battery had anti-tank rounds; the gun crews had drilled in anti-tank direct fire; and the sergeants who were the section chiefs all knew how to use direct fire to defend against ground attacks on their position.

As soon as the tanks were spotted, the appropriate report was telephoned to the battalion command post. However, the battery commander, Captain X, did nothing more, apparently awaiting orders. Neither did the section chiefs. Captain X gave no orders, took no initiative to engage the slowly moving tanks at the range of three to four kilometers. At about 500 meters the tankers saw through the battery's camouflage and attacked, making repeated passes firing blanks from their machine guns at a range of about 50 meters.

- Not a single round was fired from the battery at longer range to slow this threat to the brigade flank.
- Not a single round was fired at short range to save itself when it was being machine-gunned.
- There was *complete silence* from the battalion command post: no orders to fight or withdraw, no reassurance about air attacks or massed fire on the tanks from division's other batteries, all of which were within range.
- Utter chaos was created as other batteries fled the tanks, creating a motionless, vulnerable traffic jam.

Organic fire support that was supposed to be provided by this artillery battalion was lost to the infantry brigade.

This example illustrates the probable occurrence of "droning," both by the battery commander and in the battalion command post up to and including the battalion commander. The battalion commander, and apparently everyone else in the command post, had simply ceased to function. Had anyone functioned sufficiently to say "Fire!" to the battery commander, he would probably have said "Fire!" to his section chiefs, who would have used their training to good effect. But for sleep-deprivation, whatever the battery commander's overall quality as a leader, he might well have taken the initiative to say "Fire!" on his own.

The passivity of the section chiefs is a more complex matter. The section chiefs and gunners were not particularly sleep-deprived. But their initiative had been destroyed by the battery commander's lack of self-restraint and social judgment. His public mistreatment of his lieutenant had destroyed initiative at all ranks below him. Had this not happened, the observer conjectures that the section chiefs might have taken the initiative, at least to say "Sir! That's the enemy! For God's sake, give the order to fire," not unlike Mr. Truesdell on the *Astoria*. The higher level of command seemingly was paralyzed by sleep deprivation; the lower ranks, however, were paralyzed by the predictable moral damage inflicted by the leader's lost balance, which could possibly have been due to sleep deprivation.

Empirical sleep studies of a force-on-force exercise at the National Training Center bear on this case:

Whereas the personnel at the squad and crew level averaged between 7-8 hours of sleep each night, those at battalion and brigade level averaged little more than 4 hours of sleep each night. Thus, from the perspective of sleep and its effects on performance, we would expect personnel at lower echelons to be more effective than personnel at higher echelons. Our observations confirmed this prediction--*we saw the more junior personnel improving their performance over the course of the exercise and the more senior, higher echelon personnel "droning."*[22]

More History--The Doolittle Commission Report

One of the institutional legacies of World War II, embodied in the deceptively insipid 1946 Doolittle Report on officer-enlisted relations,[23] was a much-needed reaction against abuse of position that characterized the behavior of a distressing number of newly commissioned or rapidly promoted officers during World War II: "Rank has its privileges." Reforms following the Doolittle report were mainly cosmetic, and many were subsequently abandoned. But since Vietnam, leaders in the US armed forces have made a vigorous effort to rebuild a sense of duty, obligation, and responsibility, and to restore a balance between the privileges and responsibilities of rank, with the emphasis on

responsibilities.[24] In this highly desirable climate of reform, commander self-maintenance is unfortunately prone to be equated with self-indulgence.

It is apparent that the civilian sector today may be in even greater need of its own Doolittle Report. The civilian sector has not yet begun the self-reforms that the armed forces have gone a good distance in implementing. "Rank has its privileges" has gone wild in corporate executive suites, manifested by inflated and demoralizing executive compensation and corporate-headquarters luxuries. Economic theorists tell executives that it is not only legal but also virtuous to jump from company to company in search of marginally better compensation, virtuous to destroy thriving and profitable communities of work in quest of abstractions such as "market share." Much of corporate America is stuck in 1946, while the armed forces have significantly reformed themselves. The phase difference between the moral cycles in the civilian and military sectors is at present distinctly to the credit of the latter. The risk is that the armed forces may have swung too far in the other direction, in the direction of perfectionism bordering on moral hypochondria, an airless perfectionism that can cause tragic outcomes.

A Decent Respect

Prevention of physical injury in military operations, to the maximum degree possible without compromising other legitimate goals, is not controversial. It is part of the common sense of military officers to take care of their troops. But the author's work to repair the psychological wreckage of war suggests that we need to nudge prevention of psychological injury into the common sense of the officer corps as well. Counterintuitive as it may seem, commander self-maintenance is the place to begin if we wish to reduce the incidence of both physical and psychological injury in the services. For a leader to take care of his or her people, this leader must start with the self and work outward. It should be evident that this is neither a call for restoration of "Rank has its privileges," nor the culture of narcissism. Building self-maintenance into formal leadership doctrine, no less into our military folk culture, requires fresh philosophical work.

It is clear that an adversary, whether in combat or a high-stakes armed intervention, will play a role in all this. Staying with the example of sleep deprivation, the opponent will attack both the commander's and the troops' capacity for cognitive discrimination and judgment by harassing fire and probes, by psychological operations such as blaring loudspeakers, by feints, by surprise, by deception. The enemy attacks sleep; the enemy aims at creating sleep deprivation. Tough, realistic training can prepare troops and leaders alike for the deprivations that the adversary will attempt to impose on them. If the more extreme forms of this training get across the message, "There are no supermen," so much the better. But earning the coveted green tabs should not leave the officer or senior noncommissioned officer with illusion. Practices that *assume* sustained superhuman effort plant the seeds of operational failure.

It is not rational to valorize resistance to deprivation to the point that we create such dangerous illusions as believing that "real tough guys" can go without sleep or that the commander's crushing personal fatigue somehow translates into safety for the troops.

Officers able to resist the blandishments of the "macho" illusion sometimes fall prey to the altruistic illusion. This article has pointed out some of the cultural and religious background that makes self-denial seem valorous and makes these illusions so attractive and hard to resist.

The ethical standing of the self is an unresolved issue in our philosophy, an invisible gap, if you wish. Commander self-care most readily acquires a positive ethical standing if it is strongly valued and supported by a community--in particular, the community of the commander's peers and superiors. If seniors were to say to their subordinate leaders and peers, "In order for me to do my job, I need to know you are taking care of yourself," the cultural basis for denial of self-care would slowly but steadily begin to change. One needs to imagine such a voice saying, "It's your duty to take care of yourself, including getting sleep when I myself may be awake and aware that you are asleep. If you fail to maintain yourself, I will feel you are letting me down and will think less of you as an officer." Decent self-care can become so much a part of the military culture that even the most senior officers will feel that they are letting others down if they neglect themselves.

Conclusion

The only place that decent and legitimate self-care can reliably be taught is within the officer corps itself, by a leader's own bosses over the course of his or her career.[25]

Pretending to be superhuman is very dangerous. In a well-led military, the self-maintenance of the commander, the interests of his or her country, and the good of the troops are incommensurable only when the enemy succeeds in making them so. It is time to critically reexamine our love affair with stoic self-denial, starting with the service academies. If an adversary can turn our commanders into sleepwalking zombies, from a moral point of view the adversary has done nothing fundamentally different than destroying supplies of food, water, or ammunition. Such could be the outcome, despite our best efforts to counter it. But we must stop doing it to ourselves and handing the enemy a dangerous and unearned advantage.

NOTES

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1. I am grateful to Lieutenant General Paul Van Riper, USMC, for copies of his file of papers on the deleterious effects of sleep deprivation on the performance, social judgment, and sanity of both troops and leaders. The earliest paper in his collection was published in June 1964.

2. This is one of the major themes of Martha Nussbaum's *The Fragility of Goodness* (Cambridge, Eng.: Cambridge Univ. Press, 1986), particularly chaps. 2, 3, and 10. Eugene Garver, in *Aristotle's Rhetoric: An Art of Character* (Chicago: Univ. of Chicago, 1995), makes the fascinating and highly leadership-relevant claim that Aristotle was addressing the question not of how to manipulate people in general, but how to lead fellow citizens through arousal of common civic emotions and a shared ethos in situations of conflicting goods.

3. See Colonel Gregory Belenky's paper, "Sleep, Sleep Deprivation and Human Performance in Continuous Operations," presented at the "Commander Self-Care" panel, Joint Services Conference on Professional Ethics, January 1997, Fort McNair, for empirical evidence of this. There is, with increasing rank, a consistent *decline* in the amount of sleep that officers take during operations.

4. G. W. Beebe and M. E. DeBakey, *Battle Casualties* (Springfield, Ill.: Charles C Thomas, 1952), p. 28.

5. Specifically what Socrates was doing during this vigil is neither significant to Alcibiades, nor to us--the point is Socrates' self-denial and self-control. Plato, *Symposium*, 219e-220d, trans. by Michael Joyce in *Plato: The Collected Dialogues*, ed. E. Hamilton and H. Cairns (Princeton, N.J.: Princeton Univ. Press, 1961), pp. 570-71. Alcibiades sets the context for this story with another anecdote of Socrates' self-control and self-denial. Emphasis added.

6. Matthew 26:38-45, KJV. Emphasis added.

7. I am grateful to Captain Tony Pfaff for pointing out to me that several aspects of commander self-care have traditionally been not only permitted, but encouraged, under the rubric of prayer. Not only have solitude and meditation been available through this route, but if the commander was also lucky in the chemistry with the chaplain, he or she could get considerable social support from the chaplain that might not have been available through any other relationship. Mutual support, respect, education, and adherence to Woody Allen's Law ("Showing up is 90%") are critical between mental health troops and the chaplaincy if psychological injury and damage to good character are maximally to be prevented.

8. Maimonides (Moses ben Maimon), *The Commandments*, trans. C. B. Chavel (London: Soncino Press, 1967).

9. Kant himself wrote, "There is no question in moral philosophy which has received more defective treatment than that of the individual's duty towards himself. *No one has*

framed a proper concept of self-regarding duty." (Emphasis mine--still true!) Immanuel Kant "Duties to Oneself," and "Proper Self-respect" from his *Lectures on Ethics*, excerpted as "Dignity and Self-respect" in *Vice and Virtue in Everyday Life*, ed. C. H. Sommers (New York: Harcourt, Brace, Jovanovich, 1985), pp. 390-91. As suggested in the quote below by a professional Kantian, Barbara Herman, Kant did not succeed where others had failed. In "Proper Self-respect" he makes a heroic but unsuccessful attempt to harmonize the Gospels with Aristotle's account of *megalopsukhia* in *Nichomachean Ethics*, IV:3, 1123a-1125b, apparently. Kant does not footnote the sources he is alluding to.

10. Michael Slote, "Some Advantages of Virtue Ethics," in *Identity, Character, and Morality: Essays in Moral Psychology*, ed. Owen Flanagan and Amélie O. Rorty (Cambridge, Mass.: MIT Press, 1993), p. 441. Emphasis added.

11. In the same volume, Barbara Herman, "Obligation and Performance: A Kantian Account of Moral Conflict," p. 319.

12. In the *civilian* professional world, it is only when we perceive some threat to health or safety in a claim made upon us by another that the self rises above the ethical horizon for the first time. Here at last Kant offers us some license for self-care in §§5 and 19-20, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge, Eng.: Cambridge Univ. Press, 1991), pp. 218, 239-40. Even this limited ethical standing for the self is dubious for the military professional. A civilian who knowingly places himself in immediate danger to his life could be subjected to involuntary psychiatric hospitalization in most of the United States. Under some circumstances a commander who *fails* to place himself in danger may be condemned as a coward and relieved. It should be obvious that the account of self-maintenance offered here does *not* include avoiding all the dangers of battle that the commander's subordinates must face.

13. The best brief survey of the factors exacerbating or protecting against psychological injury in war is Colonel Franklin D. Jones (USA Ret.), "Psychiatric Lessons of War," in *Textbook of Military Medicine, Part I, War Psychiatry* (Washington: Office of the Surgeon General, Walter Reed Army Institute of Research, 1995), chap. 1. More detailed single-topic chapters that offer insights for commanders and for those who may be called upon to consult with and support commanders are chaps. 1-6, 10, 11, and 19 of *War Psychiatry*. Its companion volume in the same series, *Military Psychiatry: Preparing in Peace for War*, also contains highly illuminating and informative material, particularly chaps. 1-3, 5, 6, 9, 10, 13, and 19.

14. Credit for this insight belongs entirely to Lieutenant Colonel Faris Kirkland (USA Ret.), Ph.D.; any errors of historical fact or analysis belong entirely to me.

15. Bruce Loxton, *The Shame of Savo* (Annapolis, Md.: Naval Institute Press, 1994); Winston Lewis, *The Battle of Savo Island* (Washington: Naval Historical Center, 1994; reprint of 1943 Combat Narrative).

16. Loxton, p. 175.
17. Ibid., p. 221.
18. Ibid., pp. 206-07.
19. Lewis, p. 21.
20. Quoted in Loxton, p 171.
21. My source was an observer from the Department of the Army. He was not an umpire, and knew the division, battalion, and artillery battery where he stood this day extremely well.
22. Belenky paper, pp. 3-4. Emphasis added.
23. United States War Department Board on officer-enlisted men relationships. Report of the Secretary of War's Board on officer-enlisted man relationships to Hon. R. P. Patterson, Washington, D.C., 1946.
24. James Kittfield, *Prodigal Soldiers* (New York: Simon & Schuster, 1995.)
25. The constellation of leadership practices frequently called *Auftragstaktik* accomplishes many of these things to a significant degree.

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